Douglas Aircraft Company, a component of McDonnell Douglas Corporation *and* Wilbert David Sonnier

United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local Union No. 148 *and* Wilbert David Sonnier

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW *and* Wilbert David Sonnier Cases 21–CA–27267, 21–CB–10718, 21–CB–10782, and 21–CB–10721

May 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On September 18, 1991, Administrative Law Judge William J. Pannier III issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondents, Douglas Aircraft Company, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local Union No. 148, and International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW, each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The judge found that evidence concerning employee Wilbert Sonnier's verbal reminder and last chance agreement cannot be considered as background evidence because those events occurred outside the 6-month limitations period under Sec. 10(b) of the Act. We disagree. While an unfair labor practice may not be found based on evidence relating to events that occurred outside the 6-month limitations period, such evidence may be used as background evidence throwing light on unlawful conduct that allegedly occurred within the limitations period. *Storer Communications*, 295 NLRB 72 fn. 3 (1989), petition for review denied sub nom. *Stage Employees IATSE Local 666 v. NLRB*, 904 F.2d 47 (D.C. Cir. 1990). Therefore, we find that evidence concerning Sonnier's verbal reminder and last chance agreement may be considered to determine whether the Respondent Employer harbored any hostility towards Sonnier for engaging in protected activity, and whether Sonnier's termination was motivated by that hostility. Upon consideration of this evidence, however, we find, in agreement with the judge, that neither the verbal reminder nor the last chance agreement demonstrates hostility towards Sonnier for engaging in protected activity.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

We correct the following inadvertent error of the judge, which does not affect his conclusions. In sec. III,B,4, par. 20, of his decision, the judge inadvertently stated that on August 24, 1989, Human Resources Branch Manager Rick Shultheiss asked Sonnier to explain his version of the events that occurred the morning of August 12, rather than the events that occurred the morning of August 21.

Neil A. Warheit, for the General Counsel.
Catherine H. Helm and *Jack P. Lipton (Irell & Manella)*, of Los Angeles, California, for Respondent Employer.
Robert A. Bush (Taylor, Roth, Bush & Geffner), of Los Angeles, California, for Respondent Local.
Robert M. Dohrmann (Schwartz, Steinsapir, Dohrmann & Sommers), of Los Angeles, California, for Respondent International.
Wilbert Sonnier, of Inglewood, California, pro se.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Los Angeles, California, on October 25 and 26, 1990, and on January 7 through 10, 1991, based on a second order consolidating cases, amended consolidated complaint, and notice of hearing issued by the Regional Director for Region 21 of the National Labor Relations Board (the Board), on May 15, 1990. That complaint is based on four unfair labor practice charges—in Case 21–CA–27267, filed on January 3, 1990; in Case 21–CB–10718, filed on January 3, 1990, and amended on March 13, 1990; in Case 21–CB–10721, filed on January 4, 1990, and amended on February 28, 1990; and, in Case 21–CB–10782, filed on March 27, 1990—and alleges violations of Section 8(a)(1) and (3) and Section 8(b)(1)(A) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record,[1] on the briefs that were filed, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Douglas Aircraft Company, a component of McDonnell Douglas Corporation (Respondent Employer), has been a Maryland corporation engaged in the manufacture of aircraft and related products at various locations in the United States, including at a facility located at 3855 Lakewood Boulevard in Long Beach, California, where the alleged unfair labor practices had their genesis. In the

[1] To the extent they were not opposed, the motions to correct transcript are granted. While there is opposition to 12 proposed corrections, on the ground that they were substantive in nature, a review of the record, the proposed corrections and my notes indicate that the proposed corrections more accurately reflect the testimony that was given and, accordingly, I grant the motion to make those proposed corrections.

normal course and conduct of those business operations, Respondent Employer annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside the State of California. Therefore, I conclude that at all times material, Respondent Employer has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

At all times material, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local Union No. 148 (Respondent Local), and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Respondent International, and collectively Respondent Unions), have each been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

This case is more complex than the pleadings might suggest. It involves a number of incidents underlying most of the complaint's allegations. There are a number of contradictions among witnesses regarding what occurred in most of those instances. Nevertheless, a sufficient number of undisputed facts exists to construct an overall framework within which conflicting evidence can be presented and analyzed in succeeding sections pertaining to various incidents on which the complaint's allegations are based.

At all times material, Respondent Employer had been party to a collective-bargaining contract with Respondent International ''acting through its Locals No. 73, 148, 1093 and 1482'' as the representative of employees employed in classifications enumerated in that contract. Wilbert Sonnier became one of those represented employees in May of 1985, when he was hired by Respondent Employer as an aircraft instruction service or structural mechanic. He worked continuously for Respondent Employer until August 25, 1989,[2] when he was fired.

In late 1987 or early 1988, acting with the approval of Respondent Local, Respondent Employer modified its employee-involvement program, introducing what is referred to as a TEAM concept in Department 509. Application of that program was then expanded gradually to other departments and areas during ensuing months. TEAM's significance in this proceeding arises particularly from its designation of certain unit employees as facilitators, persons who serve, in effect, as leadpersons or mentors for other employees.

In August of 1988, Sonnier was elected steward for Department 509. Three months later Respondent Employer prepared a list of Department 509 structural mechanics whose skills might be improved through additional training. Employees whose names appeared on that list were ones who could be temporarily reassigned to a job training program without impairing operations in Department 509. Once prepared, that list was entitled ''509 EXPENDABLES.''

Shortly after its preparation, a copy of the expendables list came into Sonnier's possession. From its title he presumed that it was a layoff list. He undertook an investigation to confirm that presumption, speaking with supervisors and employees, including some whose names appeared on the list. Not surprisingly, that investigation generated a certain amount of apprehension among the employees in Department 509, especially among those whose names appeared on the expendables list.

When Respondent Employer and Respondent Local learned of Sonnier's activity, they conducted a meeting with him to ascertain from what source he had received the list, as well as to clarify its purpose. Despite that explanation, Sonnier filed grievances on behalf of some of the expendables. In the end, Respondent Employer's officials apologized for the confusion and explained the true purpose of the list to the employees. However, on Sunday, December 18, 1988, the Los Angeles Times published an article concerning it. In that article, Sonnier was quoted as characterizing the list as ''a hit list'' and, further, as asserting that the list ''could not have been compiled without the help of facilitators, who are union members'' and an integral component of a program intended to ''weaken the union and get everybody fighting.'' Also quoted in the article was then president of Respondent Local, Douglas L. Griffith. He accused Sonnier of being antiunion by trying to resurrect old internal disputes within Respondent Local and by ''undermining the union's new 'cooperative approach' to labor-management relations.''

A verbal reminder was issued to Sonnier on December 12, 1988, as a result of an earlier verbal confrontation on the floor of Department 509 between Sonnier and then Bargaining Committee Co-Chairman Ned Scott, who was also employed by Respondent Employer. The General Counsel argues that the verbal reminder had been motivated by the expendables list incident. The circumstances leading to issuance of the verbal reminder, as well as its effect on the allegations in this proceeding, are discussed in subsection III,B,l, infra.

Within Respondent Local there has been a practice of employees forming caucuses, similar to political parties. Each caucus submits a slate of candidates whenever there are elections for officers of Respondent Local. During the period material to this proceeding, the two largest caucuses were PUSH and New Horizons. The officers of Respondent Local during 1989 were members of the New Horizons caucus.

As 1988 progressed to conclusion, Sonnier's expendables list experience, and his opposition to unit employees serving as facilitators, led him to form a caucus to serve as a base of opposition to TEAM. He denominated that caucus ''Union Power'' (UP), because, as he explained in a leaflet, ''Power is what the Union was built on, by the membership.'' So far as the evidence shows, none of Respondents became aware of these activities during 1988. So far as the record discloses, their first awareness of UP did not occur until its first leaflet was distributed at the gates of Respondent Employer's Long Beach facility on January 10.

Thereafter, leaflets or fliers, almost all of which were signed only by Sonnier, were periodically distributed at those gates. Their messages regularly opposed any form of employee involvement program: ''The Team Concept asks workers to cooperate with management, but cooperation with management, ever so subtly turns into competition with one[']s fellow workers.'' They also criticized Respondent Employer and its officials with accusations such as ''attempt-

[2] Unless stated otherwise, all dates occurred in 1989.

ing to undermine the unity and solidarity of the workers on the plant floor.''

The leaflet's most strident criticism was reserved for Respondent Unions and their officials because of their cooperation in those programs. For example, the initial leaflet protested that they

> [p]raise the company man, Jim Worsham. Our own Union President says that we owe him a tremendous vote of thanks for saving our jobs. . . . If we owe a man like this a tremendous vote of thanks, then we owe people like the Ayatollah Khommeni, Mr. Kaddafi and Adolph Hitler also, for their contributions to the suffering in the free world.
>
> Now that Japan has come along, we fight for them in the form of the Japanese style team concept, forgetting being ''Americans.'' We, as Americans, built Japan before and after the war, now they teach Americans. I plead, as an American that we stick together for all our Union rights not just Japan[']s rights to buy out our country.

Similar refrains were voiced in succeeding leaflets, distributed on approximately February 14, March 14, May 23, and July 4 and 11, with the final one before Sonnier's termination being distributed on August 15:

> UP is the *only* group in the plant that is 100% committed to the work force, therefore we are the *only* group *100% against* TQMS. Don't let both the company and our company controlled Union brain wash and mislead you out of a job when they invite you to meetings, lunches, or their various other brain washing tactics.

The reference to TQMS should not pass unnoticed. It is an acronym for a concept intended to improve operations by, to the extent relevant here, restructuring from functional units to organizational structural programs, thereby aiming for greater work group autonomy so that lower supervisors would be relieved of day-to-day activity involvement and could, instead, concentrate more on ''upstream problems.'' The bottom line for TQMS would be reduction in the number of management levels and of the number of managers populating them.

However, Respondent Employer did not introduce TQMS until a manager's meeting on February 13. As will be seen, that date is significant in evaluating the testimony concerning one of a number of comments purportedly made to Sonnier by Respondent Employer's officials with regard to his opposition to employee involvement programs. The testimony concerning those asserted comments—ones on which the General Counsel relies heavily to establish hostility toward Sonnier for his concededly protected opposition to TEAM and TQMS, as well as to establish the allegedly unlawful motivation for Sonnier's termination—is described in subsection III,B,2, infra.

As described in greater detail in subsection III,B,3, infra, on March 30 Sonnier was suspended pending investigation for insubordinately refusing to follow the direction of his immediate supervisor: Department 509, Building 13 Section Manager Sita Atafua. At a subsequent meeting with representatives of Respondent Employer and Respondent Local, Sonnier was told he would be allowed to return to work only if he signed a ''Last and Final Chance Agreement,'' which provided in pertinent part:

> Mr. Sonnier agrees that he did fail to comply with management's request for him to report to his Supervisor at the commencement of his regular shift and that such conduct was insubordinate. As such, Mr. Sonnier agrees that [Respondent Employer] could terminate him for the aforementioned conduct and that such terminal action would be for just cause. [Respondent Employer] however has heard the petition made on Mr. Sonnier's behalf from his immediate Supervisor and his Union, [Respondent Local]. Therefore, in lieu of discharge, [Respondent Employer] offers this agreement under the following terms and conditions.

The agreement then specifies six conditions under which Sonnier could continue employment with Respondent Employer:

> 1. Mr. Sonnier agrees that he will promote an amicable relationship between the parties.
>
> 2. Mr. Sonnier will be required for the next 180 calendar days commencing 03–24–89 to have a signed Union Activity Pass prior to conducting union business. AT [sic] the completion of the aforementioned 180 calendar days, management will review and determine whether Mr. Sonnier needs to continue on the Union Activity Pass procedure.
>
> 3. Mr. Sonnier will report to his immediate Supervisor at the commencement of his regular shift. Mr. Sonnier will be allowed to conduct union business that he may have provided he is on an approved Union activity Pass.
>
> 4. The period of time between 03–30–89 to 04–24–89 will be considered as a Disciplinary Layoff for Unsatisfactory Conduct. (No backpay is involved.)
>
> 5. Mr. Sonnier understands and agrees that should he elect to violate Company Rule(s) in the future, he will be subjected to immediate termination.
>
> 6. Finally, Mr. Sonnier and his Union, [Respondent Local], understand and agree that the agreement represents Mr. Sonnier's last and final chance for employment with [Respondent Employer].

Sonnier signed the agreement, although, as the price for doing so, he attempted to have officials of Respondent Employer and Respondent Local sign a document that he had prepared before their meeting. However, save for one alternate steward, all of those officials refused to do so.

In essence, a union activity pass is a permit that allows an employee who is a union official to leave his/her assigned work location to conduct union business in some other area of Respondent Employer's Long Beach facility. The pass, itself, is a printed form with designated spaces for writing in the name and work location of the employee-official, the person in another area to be contacted, signatures of the employee-official's immediate supervisor and time of day that the employee-official was signed out and back into his normal work area, and signatures of the contacted supervisor or personnel representative and times that the employee-official was signed into and out of the location to which that official

went from his/her normal work location. Thus, before leaving his/her work area, the employee-official obtains the signature of his/her immediate supervisor, who also writes the time of signing on the pass. Upon arriving at the designated location, the supervisor for that area signs the pass and, also, writes down the time of doing so. When the employee-official's business is completed, the latter supervisor again signs the pass and writes in the time of the official's departure, after which, upon arriving at his/her normal work location, the official's own supervisor collects the pass, signs it and writes in the time of doing so, and then files the pass.[3]

Following Sonnier's return to work, there were periodic reports to human resources personnel that Sonnier had been observed in areas other than those for which he had secured union activity passes. However, those reports were never verified. Thus, Sonnier continued to author and distribute UP leaflets, and continued to work and act as steward, without further incident, so far as the evidence shows, until August 21.

As discussed further in subsection III,B,4, infra, on that day a sequence of events began to unfold that would lead to his termination 4 days later. Here it need only be noted that at 6:30 a.m. on August 21, Atafua signed a union activity pass that permitted Sonnier to contact Tool Liaison Coordinator Robert Rivera, an employee who then worked in a different section of Building 13, a large structure in which Sonnier's own work area was located. Sonnier was signed in by Rivera's immediate supervisor, Rick Cohen, at 6:35 a.m. and would not be signed out by Cohen until 10:10 a.m. Thus, from the face of the pass one would assume that Sonnier had been conferring with Rivera in Building 13 for 3 hours and 35 minutes that morning. But, by Sonnier's own admission, that assumption would be incorrect. That is, Sonnier and Rivera did not remain together for the entire time between 6:35 and 10:10 a.m. on August 21. For, Rivera had been summoned for an emergency job and had spent approximately an hour away from Sonnier that morning.

At some point between 9:40 and 9:50 a.m. on August 21, then-Department 509, MD-80 Program Human Resources Branch Manager Rick Schultheiss received a telephone call from Mark John Curtin, who reported that he had just seen Sonnier between Buildings 2 and 12. For approximately 6 months, until some date before August 21, Curtin had been a human resources administrator for the MD-80 program in Building 13, an admittedly supervisory position. It is undisputed that the above-described union activity pass that Sonnier possessed to confer with Rivera did not allow him to be in the location where Curtin had placed him during the call to Schultheiss. Further, it also is not disputed that had Sonnier, in fact, been at that location between 6:30 and 10:10 a.m. on August 21, it would have constituted a violation of Respondent Employer's rules and, in turn, of the last and final chance agreement.

After Curtin's call, Schultheiss ultimately went to Sonnier's normal work area, but Sonnier had returned to that area by the time that Schultheiss arrived there. Nevertheless, in light of Curtin's report and of the restrictions of the last and final chance agreement, Schultheiss initiated an investigation of Sonnier's movements that morning. In the course of that investigation, he obtained Sonnier's union activity passes for August 21 and, also, written statements from Curtin, describing his observation, and from Cohen.[4] To the extent pertinent here, the latter's statement recites: ''I have no knowledge of Mr. Rivera or Will [sic] Sonnier Leaving the Department area, nor did I give Mr. Sonnier or Bob Rivera permission to leave the dept. area.'' In the first paragraph of his statement, Curtin recites: ''On Monday 8/21/89 at approximately 9:45 am, I observed Wil Sonnier standing between building 12 and building 2. Wil was conversing with another employee near building 12. I was sitting at the bus stop waiting for the in-plant shuttle.''

Based on this information, Schultheiss convened a meeting on August 24 with Sonnier and representatives of Respondent Local during which Sonnier was suspended pending further investigation of his whereabouts during the morning of August 21. Following that meeting, further investigation was conducted. Schultheiss obtained a worklog showing that Rivera had taken the emergency job on August 21 at 8:40 a.m. Cohen submitted to Schultheiss a written statement from Rivera who wrote: ''I WAS ON CALL ON DATE 8/21 AT 8:40 A.M.'' It is not disputed that, under the pass procedure, when Rivera had returned to work, Sonnier should have returned to his own work area and returned with a new pass to that of Rivera only after the latter had again become available for consultation. As a result, the investigation disclosed a second infraction of company rules.

On the basis of the information he had collected, Schultheiss concluded that Sonnier should be discharged. He made that recommendation to his own immediate supervisor, Ronald Berger, general manager of human resources for MD-80 program. Berger concurred. Thus, on August 25 Schultheiss convened a meeting with Sonnier, attended also by bargaining committee Co-Chairman Scott and alternate steward Nick Gallegos. During that meeting, Sonnier was notified that he was being discharged. The reason listed on his employee status change notice is ''UNSATISFACTORY CONDUCT.'' The General Counsel alleges that the true motive for the discharge had been Sonnier's union and/or protected activity.

On the day of his discharge Sonnier filed a grievance, claiming ''I WAS UNJUSTLY TERMINATED BY THE COMPANY.'' Attached to that grievance was a factsheet on which Sonnier wrote his reason for filing the grievance:

> This is a Grievance because the Company has harassed me because of my Union activities. They unjustly suspended me on Mar. 30, 1989 and demanded that I sign an untrue agreement to get my job back. That agreement was protested at that time, but the Company and my Union Representative Refused to sign my protest. The Company also put me on Union Activity Passes When in fact no other stewards are Required to use Union Activity Passes. Since Then I have been constantly harassed and intimidated by the Company. That

[3] The union activity pass differs from an employee activity pass, which is used whenever an employee who is not a union official needs to leave his/her normal work area. However, the procedure followed for both passes appears to be identical.

[4] Schultheiss testified that, ''I like to get statement[s] from people so that I don't interpret what they are telling me. They write their own statements.'' There is no evidence that in doing so, Schultheiss proceeded any differently regarding Sonnier than he had done in conducting other investigations of employee infractions.

> day in question of my termination I was on a Union Activity Pass with a grievant. A Human Resources Administrator alleges that he saw me out of my AREA when in fact I Never Left my AREA.

In addition to his own statement, Sonnier also appended to the grievance a statement that he had obtained that same day from Rivera. In pertinent part, Rivera had written:

> It all started with a letter. . . . I showed Will Sonnier the letter. So he called Frederica the Lady in H.R. [W]e went to see her but I can't tell you about time cause I don't know but we were there until after Break. Then we were going back to our area and Will went to the Rest Room[.] I Went to see Rick Cohen as we have a line stopper[.] I logged in the logg [sic] book, and left there for Bldg 16 . . . and Proceeded to go to bldg 2. . . . I came back upstairs to my area, and Will was filling some Papers there. [W]e Discussed Somemore things about the case . . . then we went upstairs to talk to Rick Cohen. [H]e signed the . . . Pass Will had. . . .

Under the collective-bargaining contract, type I grievances, which encompass discharge ones, move immediately into step 3 of the grievance procedure, referred to as the type I hearing. At that level, evidence or witnesses may be presented and Respondent Employer is obliged to supply a written decision afterward. If the grievance is not resolved by that decision, a bargaining committeeperson and a representative of Respondent Employer meet to prepare a joint statement of facts, essentially similar to proposed findings of fact submitted in judicial proceedings, based on the evidence provided during the type I hearing. The grievance then progresses toward arbitration unless withdrawn.

The required type I hearing on Sonnier's grievance was conducted on September 6, as described in greater detail in subsection III,C,1, infra. Respondent Employer refused to reverse its discharge decision and it so notified Respondent Local. The needed joint statement of facts was prepared by Schultheiss and Scott on September 28. Save for one item, there was complete agreement between them on those facts, the most relevant of which state:

> 3. On 4–17–89 Mr. Sonnier signed a Last and Final Chance Agreement.
>
> 4. The agreement . . . required Mr. Sonnier to have a signed union activity pass prior to conducting union business.
>
> 5. Mr. Sonnier understood that should he elect to violate company rule(s) and the terms of [the last chance agreement], he would be subject to immediate termination.
>
> 6. Mr. Sonnier accepted the conditions of employment outlined within [the last chance agreement] and returned to gainful [sic] employment on 4–24–89.

The joint statement continues on to item 9, the single factual recitation to which Scott was unwilling to agree: ''On 8–21–89 at approximately 9:45 a.m. Mark Curtin, Human Resource Administrator, observed Mr. Sonnier walking towards Building 13 between Building 2 and 12.'' Then certain facts pertaining to the type I hearing are stated:

> 14. At approximately l:00 p.m. on 8–24–89 Mr. Sonnier was interviewed by Rick T. Schultheiss in the presence of Ned Scott and Paul Velasco. Mr. Sonnier was shown [the statements of Curtin and Cohen, as well as the union activity pass for 6:30 to 10:10 a.m. on August 21] and asked to explain his whereabouts between 6:35 a.m. to 10:10 a.m. Mr. Sonnier indicated that ''He was working with Rivera the whole time.'' Mr. Sonnier was offered an opportunity to write a statement concerning his whereabouts on 8–21–89 and Mr. Sonnier responded by stating ''I'll write one later. All you have is Curtain's [sic] word against mine.''
>
> 21. During the grievance hearing Mr. Sonnier claimed that he had proof concerning his whereabouts between 6:35 a.m. to 10:10 a.m. Mr. Sonnier was instructed that the record of the grievance hearing would remain open until the close of business on Friday, 9–8–89. Mr. Sonnier did not provide any additional information.

Two additional facts are referred to in the joint statement and require further explication. As described above, Rivera had mentioned the visit to Human Resources Representative Frederica Weimer in the statement that he had given to Sonnier and that Sonnier, in turn, had given to Respondent Local, along with his grievance. During the September 6 hearing that visit was brought to Schultheiss' attention. Afterward, Schultheiss approached Weimer and, following their discussion of what had occurred on August 21, she prepared a statement describing her meeting with Sonnier and Rivera that day. To the extent pertinent here, she wrote:

> Wil and Bob arrived at approximately 7:55 am. . . . Before the meeting ended I had asked Wil Sonnier to help me get in touch with P Velasco and get a good time for him to meet. . . . Our appointment ended approximately at break time—8:20 am Wil handed me his Employee Activity Pass and I signed him in and out.

The joint statement took into account the meeting with Weimer: ''On 9–12–89 a statement . . . was provided by . . . Weimer concerning the whereabouts of Mr. Sonnier and Mr. Rivera on 8–21–89 between the Hours of 7:55 a.m. to 8:20 a.m. This statement was secured based on Mr. Sonnier's testimony at the 9–6–89 grievance hearing.''

Second, prior to preparation of the joint statement, Larry Miller, service representative for Region 6 of Respondent International, had suggested to Sonnier that he obtain another statement from Rivera that was more specific as to time than the one that Sonnier had provided to Respondent Local. Prior to preparation of the joint statement, Sonnier did so. In it, to the extent pertinent here, Rivera stated:

> WE CAME OUT OF THIS MEETING [with Weimer] ABOUT 8:30–35. SONNER [sic] WENT TO TAKE A PISS. I WENT TO CHECK MY LOG BOOK[.] RICK COHEN SIGNED THE LOG BOOK, AND I LEFT FOR MLO BECAUSE I HAD A HOT JOB. . . . I CAME [back] UPSTAIRS ABOUT 9:20-25[.] WILL [sic] WAS THERE[.] WE DISCUSSED THE PROBLEM. FREDERICA HAD TOLD WILL TO PICK UP ALL THE NAME[s and phone numbers of] PEOPLE INVOLVED SO WE WENT TO BLDG 138

> AND MIKE HAYNES [sic] WAS HAVEING [sic] A MEETING. . . . THEN WE WENT UPSTAIRS AND WE DISCUSSED THE PROBLEM SOME MORE. THEN ABOUT 10:25 WE WENT UPSTAIRS TO 509. I NEEDED TO CHECK THE LOG BOOK[.] RICK COHEN WAS THERE, AND HE SIGNED WILL SONNERS PASS.

With respect to that statement, item 17 of the joint statement recites: ''Mr. Rivera has indicated that on 8–21–89 at about 8:30 a.m.–8:35 a.m. Mr. Sonnier left him and that he did not see Mr. Sonnier again until about 9:20 a.m.–9:25 a.m. . . . This statement was provided by the union on 9/28/89.''

After Scott signed the joint statement, his role in processing the grievance was completed and he forwarded the file to Bargaining Committee Chairman Jesse Salazar for further proceedings. However, as described in greater detail in subsection III,C,1, infra, the latter decided to withdraw it. He notified Sonnier of that decision by letter, dated October 4: ''Enclosed is a copy of your Grievance. It has been withdrawn because we felt no reasonable expectation of it's [sic] success.'' The General Counsel contends that this decision had been unlawfully motivated by Sonnier's internal opposition to Respondent Local's acquiescence in Respondent Employer's employee involvement programs, as reflected by his formation of UP and by his adverse remarks in UP's leaflets concerning Respondent Local's officers. In this respect, the General Counsel alleges that Respondent International, as well as Respondent Local, is responsible for this unfair labor practice, as well as for the assertedly subsequent ones of Respondent Local, because it is, at least, a joint bargaining representative and, also, because its officials had actual knowledge of Respondent Local's purportedly unlawful activities from October 4 through November 7.

Since Salazar's notification letter was sent on October 4, Sonnier was unaware of his grievance's disposition when he and four other members of UP visited the hall on that same day. As discussed in subsection III,C,2, infra, they inquired about the status of the grievance, but Salazar did not tell them that a final disposition had been reached. Instead, he said that he would be reviewing the file that night and, then, would make a decision as to whether or not to pursue it further under the contractual disputes resolution procedure. This meeting concluded when Salazar threatened to call the police if Sonnier and his group did not leave the office and when the group did so.

On the following day, Sonnier was at Respondent Local's hall to attend a stewards council meeting. Salazar took him aside and informed him of the decision to withdraw the grievance. This set in motion a sequence of events, described in greater detail in subsection III,C,1, infra, centered around Sonnier's demand for a copy of his grievance and Salazar's ultimate call to the police to have Sonnier removed from the office. At least one official of Respondent International had been present during the exchange that day. In addition, Griffith had appeared briefly during it and, while there, had announced that Sonnier was no longer a member of Respondent Local. In fact, Griffith repeated that statement during a general membership meeting on October 26. As a result, it is undisputed, Sonnier was denied the right to be nominated as a candidate for bargaining committee and was denied the right to vote in the election on November 7 for Respondent Local's officers. The General Counsel alleges that Respondent Unions violated Section 8(b)(1)(A) of the Act by virtue of those actions.

As noted above, Respondent Local's jurisdiction is confined to employees working for Respondent Employer. Under article 6, section 14 of the constitution, ''members of the Local Union are also members of [Respondent International].'' Moreover, under article 16, section 18, ''A member who had been *laid off, is on leave of absence, or is discharged* . . . who is covered by check-off provisions . . . shall automatically be considered as entitled to 'out of work' credits.'' [Emphasis added.] But, section 19 of that article provides, ''Any member who is entitled to 'out of work' credits . . . shall be presumed to continue to be entitled to 'out of work' credits and thus remains in continuous good standing . . . for the first six (6) months of such *layoff or leave*.'' [Emphasis added.]

By letter dated November 12, Sonnier sought reinstatement of his grievance by Respondent International's executive board. Carolyn Forrest, administrative assistant to the president, replied by letter on December 7, acknowledging receipt of Sonnier's ''letter dated November 12, 1989, postmarked November 24, 1989,'' and advising that,

> If your grievance was resolved by the Local Union Bargaining Committee as you indicate, you would have 60 days from the date you became aware of such settlement to appeal such settlement to the Local Union.

Sonnier then wrote to Dorothy Blake, Respondent Local's recording secretary. She responded, in a letter dated January 11, 1990, that he was not a member in good standing, since he had not paid dues after the preceding August, and his grievance had been withdrawn.

While awaiting Blake's response, on January 4, 1990, Sonnier sought review of Forrest's denial of his appeal by Respondent International's Public Review Board. Apparently this attracted attention to Sonnier's membership status in light of the out-of-work credits' provision in the constitution. The Long Beach-based officials were notified that it applied in the case of a discharged employee, such as Sonnier, and that he was deemed a member in good standing, entitled to appeal the withdrawal of his grievance to the general membership. By letter dated February 2, 1990, Blake informed Sonnier that he would be recognized to do so at the next general membership meeting.

Without unduly belaboring the matter, Sonnier was permitted to make his appeal at that meeting, the membership voted in his favor, and Respondent Local requested that Respondent Employer allow the grievance to be revived in the grievance process. Not surprisingly, the latter rejected that request on the ground that it considered the matter settled.

For the reasons set forth *post*, I conclude that a preponderance of the evidence does not support any of the allegations in the amended consolidated complaint. Rather, a preponderance of the credible evidence shows that a report of one type of infraction had generated investigation that tended to support that report and revealed that another infraction, as well, had been committed by an employee already, in effect, on probation for a prior infraction. Consequently, he was terminated for insubordination. After reviewing the facts, his bargaining agent withdrew the grievance concerning that termi-

nation, justifiably believing that it could not prevail if the grievance were to be pursued to arbitration. Finally, inasmuch as union membership was contingent on unit membership, Sonnier's union membership was deemed terminated. In the circumstances, that determination was legitimately reached, though erroneous as it turned out. A preponderance of the credible evidence does not support the allegations that these acts, nor the more particularly derivative ones alleged in the complaint, were unlawfully motivated or arbitrary.

In view of that conclusion, it is unnecessary to resolve the relationship between Respondent Unions that would have been posed had there been a violation of Section 8(b)(1)(A) of the Act. However, it should be noted at this point that although there is some undenied testimony, uncontradicted testimony need not be credited if disbelieved. *Plasterers Local 394 (Burnham Bros.)*, 207 NLRB 147 fn. 2 (1973). As he testified, I believed that Sonnier was not being candid. As set forth in succeeding sections, a review of the evidence reinforces that impression. Therefore, I do not credit his testimony.

B. *The Motivation for Sonnier's Termination*

Relying on essentially all of the pre-August 25 events covered in subsection III,A, supra, the General Counsel argues that, collectively, they demonstrate Respondent Employer's hostility toward Sonnier for engaging in activity protected by the Act and, further, that his termination had actually been motivated by that hostility. However, analysis of each incident does not support that argument.

1. The expendables list and verbal reminder

The General Counsel argues that one motive for Sonnier's termination had been ''because of his activities as steward.'' As quoted in subsection III,A, supra, in his factsheet accompanying the grievance regarding his termination, Sonnier did claim that he had been ''constantly harassed and intimidated'' by Respondent Employer following his return to work on April 24. Yet, when he testified, Sonnier did not repeat that assertion under oath and no evidence was presented that would support an assertion that he had been harassed and intimidated while performing his steward's duties during the 4-month period between that date and his suspension on August 21.

The lone incident to which the General Counsel points to support the argument of motivation by ''activities as a steward'' is the one involving the expendables list. There can be no question that Schultheiss, specifically, and Respondent Employer, in general, had been upset about its publication by Sonnier. In fact, it is undisputed that after Sonnier had refused to identify the individual who had given him the list, during his meeting with Schultheiss concerning it, Schultheiss had said that he should fire Sonnier for having stolen the list and ''deal with a lawsuit later on.'' However, it is uncontroverted that when Sonnier then asked if he was being accused of stealing the list, Schultheiss had backed down and had replied that he was not doing so.

Furthermore, that meeting had concluded with Sonnier being requested merely to ask questions before disclosing to employees information that puzzled him. Thereafter, even in the face of Sonnier's grievances on behalf of some ''expendable'' employees and of the Los Angeles Times article about the list, there is no evidence that any of Respondent Employer's officials said anything to, or about, Sonnier regarding the expendables list incident during the following 9-month period preceding his termination. So far as the record discloses, by the time of that termination, the expendables list incident had passed into a forgotten corner of inconsequential history.

Nevertheless, the General Counsel argues that the verbal reminder received by Sonnier demonstrates both that Respondent Employer harbored ongoing hostility toward Sonnier as a result of the expendables list incident and, further, that it was disposed to retaliate against him because of it. Of course this event occurred over a year before Sonnier filed the charge against Respondent Employer that has been consolidated in this proceeding. Accordingly, it involves an act that occurred outside the 6-month statutory limitations period of Section 10(b) of the Act. The General Counsel recognized that fact, but argues that the verbal reminder, and the events surrounding it, can legitimately be considered as background evidence.

The difficulty with the General Counsel's argument is that its acceptance requires a determination that an unfair labor practice had been committed in December of 1988. There is no difference between reaching such a conclusion with respect to the verbal reminder, for purposes of evaluating the motivation for Sonnier's termination, and making a determination that recognition had been unlawfully granted more than 6 months before a charge's filing for the purpose of evaluating the legality of enforcement within the 6-month period of the terms of a contract generated by that recognition. The Supreme Court refused to allow the latter in *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411 (1960). There seems no reason to conclude that it would not reject the former, as well. In neither situation does the sheep's clothing of background evidence successfully serve to disguise the wolf of an unfair labor practice determination pertaining to an act outside the statutory limitation period.

Furthermore, the General Counsel actually had the opportunity to investigate and proceed to complaint concerning Respondent Employer's motivation for issuing the verbal reminder to Sonnier. On December 13, 1988, Sonnier filed the unfair labor practice charge in Case 21–CA–26544, alleging that he had been ''harrassed [sic] and threatened'' by Respondent Employer. That charge was dismissed on January 31. The General Counsel argues that the dismissal poses no bar to consideration of the underlying verbal reminder incident under the doctrine of res judicata. However, that is not the point. Section 10(b) of the Act prevents a de facto determination of unlawful motivation. The existence and investigation of the charge serves only to dissipate any possible argument that the General Counsel had no opportunity to timely evaluate the evidence concerning Respondent Employer's motivation for the verbal reminder, because Sonnier had been unaware that he could have filed a charge regarding it and did not do so. He was aware of his right to file a charge. He did so. The General Counsel investigated and dismissed that charge. There is no basis for some form of lack of knowledge exception to the statutory bar on resolution of whether or not an unfair labor practice occurred in connection with the verbal reminder.

In any event, a preponderance of the credible evidence will not support a conclusion that the verbal reminder had been unlawfully motivated. Sonnier had been off work on

December 9, 1988. At 10 minutes before starting time on the following day, he encountered Scott discussing work-related problems with some employees in Department 509. Although Sonnier was the steward for those employees, it is undisputed that Scott's jurisdiction as bargaining committeeperson encompassed that department. Nevertheless, believing that his territory was being infringed by Scott, Sonnier testified, ''I confronted him and asked him why he was filing grievances in my area.'' An argument ensued. Each man accused the other one of having used profanity in the course of it. Scott acknowledged having raised his own voice and testified that Sonnier had done so, as well. Sonnier denied that assertion. But his denial was somewhat diminished by his description that, ''I was not aggressive in a violent sense of the word, but as far as disagreeing with him on doing my job, yes, I was [aggressive].''

Scott broke off the confrontation long enough to call Schultheiss who, about 5 minutes later, arrived in the department where, he testified

> there was a shouting match going on between Mr. Sonnier and Mr. Scott in the lower balcony. . . . There was [sic] approximately between ten to twelve employees had stopped working and Nick Gallegos[,] who is the alternate steward when Mr. Sonnier's not there, was standing between Mr. Scott and Mr. Sonnier.

Although the confrontation had begun before starting time, enough time had elapsed by the time that Schultheiss had arrived that all employees should have been working. Thus, Schultheiss separated Scott and Sonnier, after which he directed the spectating employees to commence working. Thereafter, he decided that verbal reminders should be issued to Scott and Sonnier.

On its face, there is nothing in Respondent Employer's handling of this incident that would inherently show retaliatory treatment of Sonnier. However, in arguing to the contrary, the General Counsel points specifically to the stipulated fact that no documents were found in Scott's personnel file when Respondent Employer attempted to comply with the General Counsel's subpoena for all discipline issued to Scott between November 1, 1988, and September 1, 1989. Respondent Employer was unable to explain the absence of a verbal reminder in Scott's file.

In some instances its absence might well be evidence that it never existed. Yet, every witness interrogated about this incident, including Sonnier, testified that Scott had been told that he was receiving a verbal reminder. More importantly, in her dismissal letter in Case 21–CA–26544, the Regional Director made the specific factual finding that, ''As a result of the investigation'' the evidence revealed ''both [Sonnier] and the other person involved received 'verbal reminders' for engaging in that disruptive conduct.''[5] Consequently, regardless of what may have happened to the document embodying Scott's reminder following that investigation in Case 21–CA–26544, its existence was revealed during the course of that investigation and, accordingly, it cannot be concluded that Scott had not received a verbal reminder, as did Sonnier.

Based on Scott's November 1988 comment that he would try to repair the damage in Department 509 caused by the expendables list's disclosure, the General Counsel argues that ''Scott went to Sonnier's area to take over his steward duties'' on December 10, 1988. Presumably, the inference to be drawn from that argument is that Schultheiss should have been aware that Scott did not belong in Department 509 that day and should have disciplined only Scott, not Sonnier, as the instigator of the ensuing argument, because he had been in an improper location. Yet, even if true, Sonnier could have resolved any disagreement through a less disruptive course than ''confront[ing]'' Scott in the work area. Moreover, either man could have broken off the argument before it became the spectacle that it turned out to be. Neither did so. Both were equally at fault and each received identical discipline as a result of it.

Furthermore, there is no basis for concluding that Scott had been in Department 509 incident to some master plan to relieve Sonnier as steward. Certainly, Scott's statement, about repairing the damage from the list's disclosure, does not supply that basis. Indeed, there is no evidence that Scott had been acting improperly, at all, in being there on December 10, 1988. The collective-bargaining contract does provide for stewards handling first-step type II grievances. But that provision is not worded exclusively: it does not preclude, expressly or by implication, others from handling grievances at that level. Not only was there undisputed testimony that bargaining committeepersons could—and had—handled first-step grievances, but some of that testimony was provided by Sonnier, himself—at least, until it appeared to dawn on him that his interests were not being advanced by such an acknowledgement, at which point he began testifying differently.

Initially, Sonnier testified during direct examination that ''a bargaining committee[person] can initiate a grievance, type two grievance, but it's unusual when you have stewards representing any area.'' During cross-examination he admitted that he had not been at work on December 9, 1988, and that in his absence Scott had filed the grievance that had concerned him (Sonnier) on the following day:

> A. I got a copy of the grievance that he filed the previous day.
> Q. So he had filed the grievance the previous day?
> A. That's correct, because I was not there the previous day.
> Q. So on the day you were not there, Mr. Scott had filed a grievance.
> A. Right.

Of course, that testimony represents a concession that Scott had merely been following through on a grievance that, in the ordinary course of a steward's absence, a bargaining committeeperson would file on behalf of an employee.

Apparently it dawned on Sonnier that his answers were not aiding his portrayal of Scott as being out to supplant him (Sonnier) as steward, for he began to backtrack on the above-quoted testimony, claiming that Scott had been ''in the process [of filing a grievance] when I caught him.'' Moreover, he reversed field on his earlier testimony that, while unusual, bargaining committeepersons could file grievances:

[5] Reliance on the Regional Director's factual findings as substantive evidence is allowed both as an admission under Fed.R.Evid. 801(d)(2)(A) and as a ''factual finding[] resulting from an investigation made pursuant to authority granted by law.'' Fed.R.Evid. 803(8)(C).

''my position is that if a steward or an alternate is present then he does not have to do that.'' However, pressed further for an answer as to whether or not the contract allowed bargaining committeepersons to do so, Sonnier backed away from that assertion, admitting, ''That's a legal technicality that will probably have to be looken into.'' In short, on December 10, 1988, Sonnier had taken it upon himself to ''confront'' Scott for doing something that, at best, Sonnier had no idea whether or not Scott was permitted to do under the contract.

There is no evidence that Sonnier received the verbal reminder as a result of his union or protected activity. He did not even begin action to form UP until during the same month that he received the reminder. There is no evidence that his activity in forming UP had come to the attention of any of the Respondents until the following month. Furthermore, so far as the evidence shows, the expendables incident had begun to pass into history after it had been concluded. True, an article about it did appear in the Los Angeles Times. However, that did not occur until a week after Sonnier had received the verbal reminder and there is no evidence that the reporter had been gathering the facts for it as early as December 10, 1988. No basis exists for concluding that Sonnier had been less culpable than Scott for the incident that led to the verbal reminders being issued. Both men received identical disciplinary treatment. Therefore, a preponderance of the evidence does not support an argument that issuance of a verbal reminder to Sonnier had been motivated by his prior activities as steward, specifically because of the expendables list's disclosure.

Nor does a preponderance of the evidence support the argument that, as a result of the expendables list incident, ''Schultheiss chose to bide his time and retaliate later. From that date forward, it was just a question of time before Sonnier would be terminated.'' True, Schultheiss had been upset about the list's disclosure. However, he is experienced in labor relations and appeared to appreciate that disputes, even heated ones, were only one aspect of working in the field and, moreover, had to be forgotten, once over, if meaningful labor relations were to be perpetuated. There is no direct evidence concerning any references to the expendables list incident during 1989 by Respondent Employer's officials, although if Sonnier is to be believed comments were made about other protected activity in which he engaged. Nor is there evidence, such as difficulties encountered by Sonnier in handling grievances, from which it could be inferred that Respondent Employer's conduct toward him had been motivated during 1989 by animus arising from the expendables list incident. Indeed, if Schultheiss truly had been disposed to retaliate against Sonnier because of the expendables list incident, he simply could have fired him for theft of the list, as he claimed he should do during their meeting regarding the list, and ''deal with a lawsuit later on.'' But, Schultheiss did not do so.

Therefore, I conclude that a preponderance of the evidence does not support the argument that Respondent Employer harbored ongoing hostility toward Sonnier because of the latter's activity in connection with the expendables list. Furthermore, I conclude that a preponderance of the evidence does not support the argument that Respondent Employer's August termination decision had been motivated, even in part, by any of Sonnier's ''activities as a steward.''

2. Comments attributed to Respondent Employer's officials

The other unlawful motivation attributed to Respondent Employer for terminating Sonnier was his opposition to the TEAM and, later, TQMS programs manifested through his formation and operation of UP. As set forth in subsection III,A, supra, Sonnier had formed UP as a result of his expendables list experience and, beyond that, because of his opposition to unit employees serving as facilitators under the TEAM concept. Beginning on January 10, UP periodically distributed leaflets expressing that opposition and, further, asserting that Respondent Local's officials were compromising union values by agreeing to implementation of employee involvement programs. The General Counsel argues that those activities generated hostility toward Sonnier which, in turn, led Respondents to retaliate against him.

No doubt Sonnier believed that these activities inherently generated hostility toward him by Respondent's officials. Yet that does not necessarily follow in the circumstances of this case. Unlike Sonnier, a relative novice in labor relations and a person who appeared to harbor antagonism toward anyone who opposed his own positions, all of Respondents' officials were individuals with comparatively extensive experience in union-management and internal union relationships. More specifically, each one appeared to understand that dissenting opinions inevitably accompany decisions concerning employee-employer relations and formulation of internal union policies. And each of them appeared to be mature persons unwilling to compromise his professional standing by formulating and pursuing vendettas against such dissenters. Consequently, based on the personalities involved, I find the possibility remote that Respondents' officials, or any of them, would embark upon a campaign of retaliation against someone simply because he/she opposed their programs and policies.

Furthermore, Sonnier had not been unique in opposing Respondent Employer's employee-involvement programs and Respondent Unions' policy of supporting them. It is undisputed that from the outset there had been opposition to TEAM and, later, to TQMS among the ranks of both management and employees. As a result, Sonnier had not traveled alone in his opinion regarding those programs. Moreover, his formation of a caucus was not a novel approach. Like Democrats and Republicans in the political arena, New Horizons and PUSH had been the two principal caucuses in Respondent Local. However, it is uncontroverted that smaller caucuses regularly formed to compete for membership votes on platforms disagreeing with the policies of whichever major caucus' members happen to be the elected officers at a particular time. It also is undisputed that those small caucuses have regularly been quite graphic in their criticisms and descriptions of those officers. Consequently, of themselves, Sonnier's activities in opposing employee-involvement programs were not so unique that it can be said that they inherently would have attracted the attention of and generated animus by Respondents or any of their officials during 1989.

Of course, given the extent of dissent among employees from Respondent Employer's programs and Respondent Local's acquiescence in them, it is not implausible that such animus might be generated by coordination of that dissent into a seemingly successful campaign of opposition. How-

ever, based on the evidence, Sonnier's campaign could hardly be characterized as a successful one. He testified that UP had 75 to 100 direct and 200 associate members at the end of March. There is no evidence that those figures had not been representative of UP's membership throughout 1989, at least prior to August 25. Conversely, at the end of 1989, there were approximately 45,000 employees working at Respondent Employer's Long Beach facility, of whom approximately 19,000 to 20,000 were bargaining unit members. Again, there is no evidence that these figures had not been representative of the situation throughout 1989. Consequently, UP's membership amounted to less than 1 percent of the Long Beach employee-complement and, approximately, only 2 percent of the bargaining unit employee-complement. Moreover, there is no evidence whatsoever that UP had generated or was receiving support from employees who were not its members. Accordingly, the record does not support a conclusion that UP, and concomitantly Sonnier, had posed any sort of threat to continuation of Respondent Employer's programs and to the continued officer status of Respondent Local's officials, such that it might be said that Respondents' officials would likely be motivated to eliminate him because his activities were gathering crescendo force. So far as the evidence shows, only an insignificant number of employees ever joined with Sonnier and there is no evidence that any of Respondents' officials ever viewed UP as being significant.

Sonnier seemed to appreciate that fact and appeared to be trying to plug that gap in his case by supplying evidence of remarks purportedly made to him by Respondent Employer's and Respondent Local's officials. However, as discussed in this section with regard to the former and in subsection III,C,1, infra, with respect to the latter, Sonnier's testimony served only to undermine his own credibility.

In advancing testimony concerning remarks by Respondent Employer's officials, Sonnier singled out four of its admitted supervisors and agents: Schultheiss, Curtin, Atafua, and Group Leader David Young. Chronologically, the first purported remarks occurred during a 1-week training course of company and union officials early in January at Ventura, California. During direct examination in the course of the General Counsel's case-in-chief, Sonnier testified that on one occasion during that training course Young had commented ''that they were going to start shaking this place up. Those who don't come on board with TQMS, they're going to have to get rid of.'' When, testified Sonnier, he had ''simply responded to him, 'So you can't be in opposition to a concept and still work here,''' Young had bluntly retorted, ''no.''

According to Sonnier, after that training course and after distribution of UP's initial leaflet, Curtin had mentioned that the leaflet ''was pretty humerous [sic], like a soap opera, couldn't wait until the next one came out and . . . that [Sonnier] was wasting [his] time putting these leaflets out because TQMS was here to stay. And I would go before TQMS.'' Two months later, testified Sonnier, Curtin had referred to a UP leaflet, asking why UP was opposed to TQMS when New Horizons supported it and adding ''we should start going the same directions New Horizons is and—because if we didn't—that was it.'' Sonnier further testified that between May 23 and 25 Curtin had warned ''if we kept putting these kind of leaflets out we would be fired.''

Sonnier attributed remarks to Atafua pertaining to UP's fliers on two occasions: on May 24 when Atafua assertedly ''told me that I was risking my job doing it, putting leaflets out like this. And he advised that I cease doing it,'' and, later, purportedly warning ''that my leaflets were very damaging to myself and he had heard people in upper management talking about it, and if I didn't watch myself I was going to get fired.'' With respect to Schultheiss, Sonnier claimed that in August,

> I was dealing with Mr. Schultheiss on a grievance of another employee and he warned me about myself. He told me that you had better worry about yourself instead of these employees. You're the one in trouble.

If made, these statements would be strong evidence of antagonism by Respondent Employer's officials toward Sonnier's activities in connection with UP. However, Young denied having ever told Sonnier that those who did not come on board with TEAM were going to be gotten rid of or terminated. Atafua denied ever having talked to Sonnier about union activity or fliers. Schultheiss denied having ever told Sonnier that he had better worry about himself instead of fellow employees because he was the one in trouble and, further, denied having told Sonnier that he would be fired if he passed out leaflets.

Not only were the denials of Young, Atafua, and Schultheiss credibly uttered when each one of them testified, but Sonnier's descriptions of their purported remarks were frequently inconsistent with objective considerations and, ultimately, were internally inconsistent. For example, as quoted above, Sonnier claimed that Young's Ventura threat had pertained to opponents of TQMS. Yet, after Sonnier had testified, the evidence showed, without contradiction, that TQMS had not been even announced as a program until the following month, on February 13. In fact, it had been sprung as a surprise announcement to all Long Beach personnel that day.

The resultant inconsistency with Sonnier's testimony had not merely been a slip of Sonnier's lip. He had demonstrated a clear understanding of the differences between TEAM and TQMS by describing the two programs when he testified initially. Further, when cross-examined during the General Counsel's case-in-chief, Sonnier testified without reservation that Young's comments had pertained to TQMS:

> Q. And did he use the term TQMS? That's what you stated in your direct testimony if you want to check on that.
>
> A. I think he mentioned TQMS, yeah.

In delivering that answer, the tenor of Sonnier's use of the term ''think'' was one of certitude—as in ''I affirm'' or ''I claim''—rather than one of hesitancy.

Called as a rebuttal witness, Sonnier attempted to repair the damage caused by his above-quoted earlier testimony, in light of the evidence that TQMS had not been announced until February. He first attempted to portray himself as confused about the programs: ''we [Young and I] were discussing team concept, employee involvement, TQMS whatever you want to call it.'' In so doing, he retreated from the absoluteness displayed when testifying about those programs during the General Counsel's case-in-chief. Then, reversing the

field of his above-quoted answer during cross-examination, he claimed that Young had made his remarks with respect to TEAM: ''My conversation with Dave Young was about—it was about that subject, team concept and he told me that.''

Nor is Sonnier's internally inconsistent testimony the only criterion that reinforces the doubt raised by his unconvincing description of remarks made by Young in Ventura during early January. Later that same month he gave an affidavit in support of his charge that the verbal reminder had been unlawfully issued to him during the preceding month. That affidavit was a relatively lengthy one that seemingly explored all evidence that might support his charge. Yet, although Sonnier testified that he had regarded Young's purported remark as ''very important,'' he never mentioned any remark by Young when he described the events to the Board Agent taking his affidavit. Asked for an explanation of an omission of what would have been a quite recent exchange, Sonnier lamely testified: ''I was giving them a lot because it was a fifteen page affidavit so I—it didn't come up at that time.''

Young testified that, in fact, during the Ventura training course an exchange with Sonnier about TEAM had taken place, although not the one described by Sonnier. Young testified that, one evening there, he had assisted Sonnier to his hotel room because of the latter's excessive alcoholic consumption earlier that evening. In the course of doing so, testified Young, Sonnier had asked whether TEAM was included in the collective-bargaining contract, to which Young had replied that it was only an experiment that either would or would not work out. Sonnier denied having drunk to excess while at Ventura and, also, having needed assistance in getting to his hotel room because he had done so. However, he admitted that it had been in his hotel room that he had spoken with Young, but advanced no alternative explanation for why Young—a stranger to Sonnier when the training course had opened, so far as the record discloses—would have gone there.

Nor was Sonnier's accounts of remarks by Atafua and Schultheiss consistent with objective considerations. Two interpretations of those remarks can be derived from the descriptions of Sonnier. First, that Atafua and Schultheiss had actually been trying to intimidate Sonnier into abandoning his activities in opposition to TEAM and TQMS. Yet, by the time of these purported conversations, Sonnier had demonstrated that he was not a likely candidate for intimidation. In fact, he had filed two unfair labor practice charges against Respondent Employer, protesting its treatment of him. If nothing else, those charges showed that the words and actions of Respondent Employer's officials could return to haunt them. Neither Schultheiss nor Atafua impressed me as being so naive as to ignore the potential consequences of making threats to Sonnier—of being persons likely to bring rope to their own hangings by providing evidence that could support a further charge against Respondent Employer. Furthermore, as concluded above, Sonnier's opposition to TEAM and TQMS was not such a significant matter that it likely would attract intimidation efforts.

The second possible scenario that Sonnier may have been trying to portray, through his testimony attributing remarks to Atafua and Schultheiss, is that they had been attempting to convey friendly advice to him based on remarks made to them by higher management. Yet, again, Sonnier's conduct lacked sufficient significance to provoke Respondent Employer's higher management into concern about him. Moreover, it is unrealistic to believe that Atafua would volunteer any type of friendly advice to Sonnier. Since becoming Sonnier's immediate supervisor in March, Atafua had been at loggerheads with Sonnier. So far as the evidence shows, Sonnier resisted taking work directions from Atafua and Atafua resented that resistance. It is simply inconceivable that Atafua would suddenly try to aid Sonnier through any form of friendly warning.

With regard to the remarks that he attributed to Schultheiss, during direct examination Sonnier claimed that they had been made during a meeting at which an employee's grievance was being discussed. But he did not identify that employee. Nor did he describe the grievance. In fact, he did not deny that once a grievance reaches the level of Schultheiss, the latter would ordinarily meet with a bargaining committeeperson, not a steward.

Questioned more closely during cross-examination about the purpose of his asserted meeting with Schultheiss, Sonnier retreated somewhat from his earlier assertion about the object of the meeting to a more vague account of its purpose: ''I was talking to [Schultheiss] about some other stuff. Some other information.'' Indeed, he even became suddenly vague and defensive when interrogated about the location of that purported meeting:

> Q. The conversation with Mr. Schultheiss on August 15, where did that conversation take place?
> A. In HR.
> Q. What building?
> A. 13.
> Q. What part of the HR building 13?
> A. In the office in HR.
> Q. Whose office?
> A. I don't know whose office it was.
> Q. Where was the office?
> A. Where was it?
> Q. Yes.
> A. Building 13 in HR.
> Q. Can you describe any better where it was other than that? Whose office it was next to?
> A. No.

Throughout this exchange Sonnier appeared to be more concerned with avoiding an answer that might disclose too much information—information that would enable Respondent Employer to check with other personnel who worked in any area that he specified and, perhaps, to call some of them as witnesses to refute his assertion of presence at that location at that time.

Different considerations govern the comments attributed to Curtin. He admitted having made several adverse remarks to Sonnier about UP's leaflets and Sonnier's opposition to TEAM and TQMS. However, there is no basis for concluding that Curtin's remarks to Sonnier represented Respondent Employer's attitude, as opposed to Curtin's personal view of Sonnier's activities. For, as he testified it became increasingly clear that Curtin had been following his own agenda during the spring and summer of 1989 and, further, that he was pursuing a personal agenda as a witness.

Regarding the former, Curtin appeared to have been seeking to advance as quickly as possible within Respondent Employer while it employed him. Like Sonnier, Curtin displayed

a preconceived view of labor relations, whereby management would automatically welcome the opportunity to retaliate against any employee opposing company policies. Moreover he admitted that he personally did not like Sonnier: ''[I]n my opinion . . . Sonnier didn't add a whole lot of value to [Respondent Employer]. . . . In fact, he never worked on the airplanes.'' In short, it appeared that Curtin had felt that he might be able to advance more quickly by reporting to his superiors about Sonnier's activities, while at the same time trying to give Sonnier a hard time about UP's leaflets.

However, by the time of his appearance as a witness, Curtin had been laid off by Respondent Employer. He admittedly was none too happy that he had been chosen for layoff, given his self-described ''number of skill capacities.'' Consequently, as he testified, it increasingly appeared that he was trying to do so in a manner that would damage Respondent Employer. However, his effort was a cautious one.

The most striking characteristic of Curtin's testimony was the certainty with which he generally asserted that Respondent Employer's officials had been hostile to Sonnier, coupled with the ambiguity that he then demonstrated whenever asked for details to support those generalized assertions. Whenever the latter occurred, Curtin uniformly fell back on purportedly implied thoughts and attitudes: ''it had been implied to me by my upper levels of management that Wil was a threat,'' and at another point, ''It was implied that Wil would slip up again . . . and then he would be legitimately terminated one final time.'' Following this approach, Curtin was able to damage Respondent Employer's interests while, at the same time, avoiding giving any testimony that might later be characterized as perjury.

That Curtin's remarks to Sonnier had reflected his personal views, as opposed to those of his employer, was shown most graphically by his own grudging admission regarding an occasion when he had complained to General Manager Berger about the strident language on one of Sonnier's leaflets. Curtin suggested to Berger that the discipline was warranted because the leaflet ''slander[ed] other company employees.'' Ultimately, Curtin acknowledged that Berger had disagreed, saying no more than that remarks in one caucus' leaflets could not be treated differently from those appearing in the leaflets of other caucuses. Yet, it was in connection with this particular conversation that Curtin claimed that Berger had ''implied'' that Sonnier could be terminated legitimately when he ''slip[ped] up again.'' Asked for an actual account of Berger's words, Curtin backed away from describing Berger's precise words in favor of a generalized characterization of them:

> I don't remember the exact conversation, but the conversation is, ''We can't take action based on the company rule that says thou shalt not slander other company employees. Wil will violate''—he was betting that Wil would violate another company rule that would be easier to pin information on.

I do not credit Curtin's testimony that his superiors had been saying that they would get rid of Sonnier because of his opposition to employee involvement programs. A preponderance of the credible evidence shows only that Curtin spoke and acted in his own interests, without regard to Respondent Employer's actual attitude, anticipating that advancement might follow actions motivated by his own preconceptions.

Aside from Sonnier, only one other witness attributed specific hostile remarks to Respondent' Employer's officials: Joyce Mills. Her testimony pertained to remarks purportedly made during meetings regularly conducted at a hotel among Respondents' officials, the so-called four-thirty team, to discuss aspects of the employee involvement programs. While she did not personally attend those meetings, it is undisputed that one of the participants, at least during August, had been Thurron Mallory, then a bargaining committeeperson. Mills testified that after one of those meetings,

> [Mallory] told me that they were meeting at the hotel, at the Marriott. That they—that the leaflet came out and they were discussing Wil. The vice president wanted to know who this guy was that signed the leaflets. They wanted to go up to his department and find out who he was and what he looked like and who he worked for. And Mallory said, ''And they said that they were going to get this guy because nobody could totally go against TQMS.''

Mallory never appeared as a witness, with the result that Mills' account of his remarks is neither confirmed nor denied by him. However, Respondent International's Service Representative Miller testified that he had attended ''[p]robably all of'' the four-thirty team meetings. Howser, also its representative, testified that he had attended ''most of'' them. The former testified that, during those meetings, ''I never heard any discussion about [Sonnier or his leaflets or his caucus]. In fact I probably would have objected if they had of brought it up,'' but, ''There was no such conversation when I was there.'' Similarly, Howser testified that he did not recall hearing any discussion, by any participant at any of those meetings, about Sonnier or leaflets he distributed or about the UP-caucus: ''I might add that I would object to that if I would have heard, just like Miller said. I heard nothing.''

Aside from these denials, there was inherent inconsistency in Mills' account of Mallory's purported warning. In describing it, she testified that Mallory had alerted her to what had been said ''around about the first of August.'' However, the leaflet which assertedly generated the purported four-thirty meeting remarks was not distributed until mid-August. Moreover, Mills did not stop by attributing comments to Mallory on one occasion. She claimed that he had repeated his warnings,

> Every conversation that he had thereafter was at [sic] the same thing—like, something was going to happen to him about the leaflet and he better watch himself and things like that.
>
> He said that this was a discussion at all their meetings that they were having at the company.
>
> [I]t was a constant thing that Mal and I talked.

But only 10 days elapsed between distribution of the August 15 leaflet and Sonnier's termination. Although the four-thirty team met frequently, there has been no showing that, during that 10-day period, it had met so frequently that there would be opportunity for ''all these meetings'' at which ongoing discussion of Sonnier would have been occurring.

Mills' accounts of Mallory's purported remarks also poses an inherent inconsistency with the General Counsel's entire theory of unlawful motivation for Sonnier's termination. Under that theory Respondent Employer's officials had been watchfully waiting since November 1988 for an opportunity to terminate Sonnier. However, Mallory's description of the asserted remarks of Respondent Employer's officials portrays them as individuals who were unaware of Sonnier's identity: of who he was, ''what he looked like and who he worked for.'' Yet, If Respondent Employer had truly harbored ongoing concern about Sonnier's positions and activities, as the General Counsel argues, it is hardly plausible that its officials would not even be able to identify him as late as August.

Mills was not a disinterested witness. She was an ally of Sonnier in UP. As described in subsection III,C,2, infra, she became quite involved in the propriety of his termination grievance and in his expulsion from union membership. Further, by the time that she testified in this proceeding, she had been terminated by Respondent Employer and had filed her own unfair labor practice charge against it concerning that termination. When she testified, she appeared sufficiently perceptive to appreciate that her own case might be aided if it were to be concluded that Respondent Employer had unlawfully discharged another employee at an earlier date. Given her interest in the outcome of this proceeding and the foregoing inconsistencies arising from her testimony, which serve to illustrate the impression that she was trying to testify in a manner that would advance that interest, I do not credit her accounts of Mallory's purported August warnings.

In sum, therefore, there is no credible evidence that, save for Curtin, Respondent Employer's officials expressed hostility toward Sonnier on account of activity protected by the Act. And Curtin's remarks reflected no more than his personal attitude toward those activities, rather than that of Respondent Employer.

3. The last and final chance agreement

A crucial element in the General Counsel's theory of unlawful motivation is the sequence of events that led Respondent Employer to issue the last and final chance agreement to Sonnier on April 14. Of course, like the verbal reminder discussed in subsection III,B,1, supra, a conclusion that the last chance agreement had been wrongfully motivated is one that effectively requires a determination that an unfair labor practice had been committed more than 6 months before the filing of the charge against Respondent Employer. Moreover, as had been true with the verbal reminder, Sonnier filed a charge concerning the last chance agreement, but it was dismissed following investigation. Yet, aside from these factors, a preponderance of the credible evidence does not support the argument that Respondent Employer acted unlawfully in connection with this incident.

Two separate requirements are pertinent to the discussion in this section. First, a steward needing to conduct union business upon reporting for work is obliged, under the collective-bargaining contract, to report that fact to his/her immediate supervisor at the very beginning of the shift, after which the steward is free to transact the necessary union business. The second requirement is that employees in each workarea are required by Respondent Employer to attend three daily team meetings. The first such daily meeting occurs at the very beginning of the shift, when work assignments are lined out for that day.

By Monday, March 27, Atafua had become Sonnier's immediate supervisor. During the course of that day, Sonnier was instructed by Atafua to show up at the first team meeting each day. Atafua testified that, in connection with that instruction, he had explained to Sonnier that if the latter needed to transact union business, he would be immediately released from the team meeting to do so. However, Sonnier claimed that Atafua had wanted him to attend the entire team meeting before being released. This, testified Sonnier, he refused to do, because the contract entitled him to immediate release after notification to his immediate supervisor of the need to conduct union business.

As the day progressed on March 27, the dispute about reporting to team meetings was brought to the attention of Atafua's immediate supervisor, Department 509 Branch Manager of Production Robert Patrick Stanger. Stanger had been one of the individuals who had selected employees for inclusion on what became the expendables list. However, there has been no showing that he had been involved in any of the events that occurred after employee selection. More important, there is no basis for inferring that he harbored animus toward Sonnier as a result of those postselection events.

He testified that by March 27, certain events had led him to question whether Sonnier was performing any work whatsoever when not occupied by union business. Thus, Stanger testified that he had received complaints from two mechanics that Sonnier was taking advantage of Respondent Employer's, in effect, system of automatically clocking in employees scheduled for work whenever those employees neglected to do so. According to Stanger those two mechanics had reported that Sonnier had been arriving late, but was being compensated for a full workday, because he had been automatically recorded as having reported at his scheduled starting time, by virtue of being automatically clocked in.

In addition, Stanger had been told that while Sonnier had been automatically clocked in on Saturday, March 25, and had actually clocked out at the conclusion of work that day, no one had seen him during the workday, even though Saturdays are designated as working days and no union business is to be transacted during Saturday. This report, made against the background of the mechanics' complaint, led Stanger to review Sonnier's attendance records for the proceeding 2 or 3 weeks.[6] He testified, and it is not disputed, that automatic entries are distinctively entered on attendance records and that he discovered several automatic arrival entries for Sonnier during that period. Stanger further testified that,

> what I've seen in my time at [Respondent Employer] is that people that are late for work won't punch in. And there's a pattern to it . . . the people that are at work every day are punched in every day. The people that are late or have a habit of being late, have assumed punch ins.

[6] Although characterized in the General Counsel's brief as ''unauthenticated attendance documents,'' Stanger credibly testified that these had been the records on which he had relied in March and, in this regard, the significant factor is his state of mind at that time.

In light of Stanger's investigation, it is undisputed that Sonnier was denied compensation for his claimed work on Saturday, April 25.

Against this background, on March 27 Stanger instructed Sonnier that he must report his need to transact union business at morning team meetings. Sonnier continued to insist that he needed only to report that fact to his immediate supervisor at shift's commencement, without having to attend team meetings. This argument led the disputants to Doris Jones of human resources for an interpretation of what the contract allowed or required. She told them that if Sonnier had union business to transact, he could not be compelled to forego transacting it in favor of attending team meetings, but that he should try to attend those meetings and was obliged to check in with his supervisor at 6 a.m. each morning when his shift began.

This was not the last word on the matter. Stanger testified that on the following day, Tuesday, March 28, Jones had advised him that Sonnier could be obliged to report to team meetings and then should be excused if he needed to transact union business. Stanger further testified that he had related that answer to Sonnier on Wednesday, March 29 and, when Sonnier still bridled at reporting to team meetings, had specifically directed Sonnier to report to the morning team meetings. Sonnier disputed that account.

Sonnier admittedly did not attend the morning team meeting on Thursday, March 30. But he testified that he had reported to Atafua at the 6 a.m. shift commencement that morning, although at Atafua's desk and not at the team meeting. Atafua denied that Sonnier had reported at all to him on March 30. Certain objective facts support that denial.

Attendance records disclose that, rather than clocking in at a location in Department 509 on March 30, Sonnier had chosen to do so at 5:54 a.m. in building 35. He estimated that it took approximately 10 minutes to walk from that building to his assigned work location. Accordingly, it is unlikely that he had been in Department 509 ''at the start of the shift,'' as he asserted he had been at 6 a.m. on March 30. Moreover, that assertion was not consistent with his March 30 remarks to Stanger about that subject.

Stanger testified that, as he had walked down a hallway to attend a 6:15 a.m. meeting on March 30, he had seen Sonnier coming from the other direction. When, testified Stanger, he asked if Sonnier had attended the morning team meeting, the latter replied that he had not done so and added that ''he was down at human resources.'' At no point, so far as the record discloses, did Sonnier tell Stanger at that time that he (Sonnier) had made his required report to Atafua at some location other than at the team meeting.

In light of Sonnier's admitted failure to report to Atafua at the morning's team meeting, Stanger decided to suspend him for insubordination. Stanger reported that decision to Schultheiss. Schultheiss, in turn, met with Sonnier in the presence of Union Representative Oley Gray, whose presence had been requested by Sonnier, but who did not appear as a witness in this proceeding. There is no evidence that Sonnier had asserted during the ensuing meeting that he had reported his need to transact union business to Atafua earlier that morning. Instead, Sonnier confined his comments during the meeting to assertions that he had been in the human resources office that morning, although he presented no evidence of the person there with whom he had conferred, and that he could not be required to attend team meetings whenever he had union business to conduct. While offered the opportunity by Schultheiss to embody his explanation in a written statement, Sonnier declined that invitation and was suspended.

After investigating the matter further, Schultheiss convened a pretermination arbitration board (P-TAB), in effect a proceeding, in which Respondent Local participated, at which the evidence was reviewed so that Respondent Employer could ascertain if discipline was warranted. Schultheiss reached the conclusion that termination of Sonnier was warranted on the ground of insubordination. While disagreeing with that course of action, Respondent Local's officials doubted their ability to prevail in arbitration if Sonnier were to be terminated. As a result, they decided to pursue an alternative course to preserve Sonnier's job.

Contact was made with both Schultheiss and General Manager Berger in an effort to persuade them not to fire Sonnier. Schultheiss was not particularly receptive to these pleas, but Berger proved more sympathetic. As a result, Berger refused to approve discharge of Sonnier and directed Schultheiss to work out an alternative course with Respondent Local. Several years earlier, before they advanced to the positions they occupied in 1989 with their respective organizations, Schultheiss and Salazar had developed the last and final chance agreement. It is a means of affording an opportunity for employees, who otherwise would have been discharged, to preserve their jobs by giving them a final chance to correct their misconduct. Faced with Berger's unwillingness to approve termination, Schultheiss decided to propose the last chance agreement to Respondent Local. But before doing so, he decided to draft, ''an absolute statement in the agreement that would indicate that if Mr. Sonnier failed in any aspect in the future on any point, he would be immediately discharged, no frost on it whatsoever, immediately discharged. I also wanted no provisions or limitations on the union pass procedure.''

Schultheiss met with Scott and Salazar. They were receptive to the concept of a last chance agreement, but were not enthusiastic about the stringency of the language proposed by Schultheiss. Ultimately, language was negotiated and an agreement was prepared, as quoted in pertinent part in subsection III,A, supra. The final event concerning this aspect of the case occurred when they met with Sonnier to present him with the option of signing the agreement or being terminated.

That meeting occurred on April 17. Obviously Sonnier had been aware of what would occur during that meeting, for when he was presented with the last chance agreement, he promptly produced his own typed ''special agreement.'' When presenting it, Sonnier said that he would sign the last chance agreement if the officials of Respondent Employer and Respondent Local would sign his agreement. That agreement stated:

> Due to the fact of a 16 day suspension, I am now being brought back to the company by Special Agreement. There were never any facts supporting the 16 day suspension (and it was totally unjust) at which time I now protest signing the Special Agreement dated 4–17–89.

> I understand I have to sign this agreement to be reinstated within the Company, but it will be under protest and further recourse shall be sought.

Schultheiss flatly refused to sign the special agreement and said that he would withdraw the last chance agreement option if Respondent Local's officials signed it. After conferring separately with officials of the latter and with an official of Respondent International, who had been present, Sonnier signed the last chance agreement.

Sonnier testified that he had done so only after alternate steward Gallegos, the lowest ranking union official present that day, had signed his special agreement, even though every other official had refused to sign it: ''I assumed that one signature would make this agreement binding as far as the union was concerned. I was going to grieve this situation at a later date.'' Yet, while it is clear that Gallegos did sign Sonnier's special agreement, there is no independent evidence that he had done so during the April 17 meeting, as opposed to afterward when Sonnier recorded on the special agreement the names of the representatives who had been present and, further, the fact that they had refused to sign it.

Sonnier returned to work on April 24. When he reported, he was met by Schultheiss and Stanger. The latter had prepared a memorandum describing expressly what would be expected of Sonnier under the union pass procedure imposed by the last chance agreement. Significantly, that agreement stated specifically that, ''You will report to your immediate supervisor at the commencement of your shift and immediately after your lunch period.''

Sonnier testified that, following his return, he had never been compelled to forgo conducting union business by having to attend team meetings. However, he did not testify that he had been exempted from attending team meetings whenever he had no union business to transact and there is no independent evidence that he had been excused from those meetings whenever he lacked such a conflict. Further, there is no evidence that after April 24 he did not make his reports of need to transact union business at the morning team meetings.

Sonnier did file a grievance concerning the last chance agreement, protesting his ''unjust[] suspension'' and the ''Agreement That Limits my UNION Activities As a Shop Steward.'' Scott processed that grievance to the third step of the contractual grievance procedure before Respondent Local abandoned it.

In an effort to escape the statutory limitation period, as well as the Regional Director's dismissal of the timely filed charge concerning imposition of the last chance agreement, it is contended that the foregoing events ''demonstrate that Sonnier's discharge was not for just cause.'' However, there is some basis for doubting that the Board, as opposed to arbitrators, can make determinations regarding ''just cause,'' as opposed to a statutorily proscribed motivation, for terminations. In the context of this case, a determination of the former appears suspiciously identical to a determination of the latter.

In any event, to the extent that there is a difference in substance rather than form, a preponderance of the credible evidence will not support either conclusion. For, with regard to this incident, the attempt to construct a case for Sonnier rests entirely upon an effort to confuse the distinction between two separate obligations: the obligation to perform work for which Respondent Employer's employees were entitled to compensation and, secondly, the obligation to attend team meetings at shift's commencement. Stanger's credible testimony shows that to accomplish the former, he instructed Sonnier on March 29 to do the latter. That is, because of suspicion that Sonnier had been utilizing his contractual excuse from team meeting attendance as a means of disguising tardiness in reporting for work, Stanger sought to prevent such misconduct through the vehicle of required reporting at the morning team meeting. At no point does the credible evidence show that Sonnier was being obliged to be present for the entirety of those meetings. To the contrary, once he actually reported to them—thereby demonstrating that he had reported on time for work—he was to be excused from further participation in the meeting whenever he explained that he needed to transact union business. And the latter was explained specifically to Sonnier by both Atafua and Stanger.

Of course, Stanger's particular solution to the suspected tardiness problem was obviated by items 2 and 3 of the last chance agreement. That is, Sonnier need not attend the morning team meeting whenever he had union business to conduct, so long as he ''report[ed] to his immediate Supervisor at the commencement of his shift'' and secured a union activity pass whenever his union business conflicted with performance of his job responsibilities, including attending team meetings. Indeed, as pointed out above, Sonnier did not claim that he had failed to attend team meetings after April 24 whenever he had no conflicting union business to transact. Accordingly, attendance at team meetings did not become ''a non-issue'' after April 24. Instead, it remained very much a continuing obligation for Sonnier.

With respect to the circumstances surrounding the incident, itself, the General Counsel points out that Stanger admittedly had not followed company policy by advising Sonnier, at the time of directing the latter to report to team meetings, that he could be discharged for failing to obey that direction. Yet, Stanger's explanation that he had not felt it necessary to take that step because Sonnier was a steward, and thus knowledgeable of the consequences of insubordination, is a logical one. Moreover, it was one that was advanced in seeming truthfulness. At that time Sonnier had been a steward for over 6 months. He had been regularly occupied during that half year with grievance processing, as shown by the fact that, if nothing else, he rarely had time to attend team meetings due to conflicting union responsibilities. Consequently, it was not illogical for Stanger to assume that Sonnier would understand that he could be discharged for failing to abide by directions. In fact, Sonnier never denied that he had not understood that such a consequence would follow its nonobservance. Moreover, Sonnier did not claim that such a specific warning would have influenced his conduct on March 30.

Also relied upon in connection with the unjust cause argument is a statement by Jones. It recites what occurred at the March 27 meeting, but makes no mention of a second conversation with Stanger, on March 28, regarding Sonnier's attendance at team meetings. Yet, there is no evidence that, in the ordinary course of affairs, Respondent Employer's supervisors memorialized in writing descriptions of conversations among themselves, as opposed to conversations between one or more of them and unit employees. Indeed, in contrast to

the latter category of conversations, it hardly seems purposeful to do so concerning the former category. However, Jones' memorandum does show that Respondent Employer had been concerned about Sonnier's attendance and, more specifically, about whether he had been reporting for work on time and, thereafter, engaging in activity for which he was entitled to compensation.

It is argued that Sonnier was the only union steward required to observe a union pass procedure. But there is no evidence that any other steward was, or ever had been, suspected of habitual tardiness and had insubordinately refused to at least show up for team meetings. Nor does the General Counsel's argument gather any force from the fact that Atafua and Stanger were two of only three individuals from Department 509 who could sign Sonnier's passes. After all, they were the supervisors for the department in which Sonnier worked.

In sum, as set forth in the preceding two sections, a preponderance of the evidence does not support the contention that Respondent Employer's officials had harbored animus against Sonnier because of his activities as a steward nor because of his opposition to employee involvement programs. Further, a preponderance of the credible evidence shows that Sonnier had been obliged to attend team meetings unless he had union business to transact; that there was legitimate concern that he had been abusing that attendance exception to conceal his tardy reporting for work; and, that Stanger had sought to prevent whatever abuse appeared to be occurring, by directing Sonnier to attend morning team meetings and then make his report of need to be excused to transact union business, at which point he would be released to do so. In the circumstances of his first encounter with Sonnier on March 30, it was logical for Stanger to conclude that Sonnier had disobeyed that direction. The preponderance of the credible evidence shows that conclusion to have been accurate, notwithstanding Sonnier's belated assertions that he had reported to Atafua, but not during that morning's team meeting. As a result, there is no basis for contending that Respondent Employer unlawfully or unjustly decided to terminate Sonnier as a result of his perceived disobedience.

That conclusion is but reinforced by the fact that Respondent Employer ultimately retracted that decision and agreed to permit Sonnier to continue working, so long as he agreed to sign and abide by the terms of the last chance agreement. Although it is argued that Respondent Employer had chosen to pursue this course because Berger ''decided that it was too risky to terminate a union steward based on sham facts,'' the evidence does not support the assertion of ''sham facts'' and there is no basis for attributing a fear of risk to Berger. To the contrary, Respondent Employer was fully prepared to terminate Sonnier later, on April 17, if he had persisted in his demand that his special agreement had to be signed. Therefore, neither the last chance agreement nor the events leading to its execution support the ultimate contention that Respondent Employer had been unlawfully motivated when it terminated Sonnier on August 25.

4. Sonnier's termination on August 25

Shorn of any credible evidence that Respondent Employer harbored or likely harbored animus toward Sonnier for engaging in union or protected activity, the General Counsel is left with the argument that the events of August 21 through 25 inherently disclose, by inference, that Respondent Employer had been unlawfully motivated when it terminated Sonnier on the latter date. However, a preponderance of the credible evidence does not support such a conclusion. There is no evidence that Sonnier's union and/or protected activity had been even a factor in the termination decision and, further, there is no evidence showing that Respondent Employer's officials would have reacted any differently had some other employee violated a last chance agreement by failing to observe restrictions on movement.

As set forth in subsection III,A, supra, at 6:35 a.m. on August 21, Atafua had signed a union activity pass that allowed Sonnier to contact and work with Rivera. Cohen, the latter's supervisor, had signed in Sonnier at 6:35 a.m. and would not sign him out until 10:10 a.m. Sonnier gave the following account of his activities during that 3-hour, 35-minute interval. After discussing Rivera's problem for almost an hour, the two of them had moved their discussion to the Weimer's office. Like the work places of Sonnier and Rivera, Weimer's office is located in building 13. However, she was unable to resolve the problem, saying that, to do so, Corrective Action Center Supervisor Mike Haines needed to be consulted. She suggested that Sonnier and Rivera go to Haines' office in building 138, approximately 10 to 12 feet from building 13, and arrange for an appointment at a mutually convenient time.

Leaving Weimer's office at approximately 8:l5 a.m., testified Sonnier, the two men went to building 138, but Haines was occupied and told Sonnier to call him later. Sonnier and Rivera then returned to building 13, arriving ''about 8:20'' a.m.—''it was break time''—when the morning break commenced. Sonnier went to the restroom and, returning to Rivera's desk, discovered that Rivera had been assigned an emergency job. He waited there until 9:20 a.m. when Rivera returned. After discussing the problem further, Sonnier had Cohen sign his union activity pass and gave it to Atafua upon returning to his own work station. Sonnier denied expressly having been between buildings 2 and 12 at any time on August 21 and, further, denied having left building 13 at any time after 8:20 that morning.

The reliability of that seemingly straightforward sequence of events loses its appeal when compared with the substance of Rivera's last two statements, quoted in subsection III,A, supra. In the first one, appended to Sonnier's grievance, Rivera states that he and Sonnier had been with Weimer ''until *after* Break. Then we were going back to our area.'' (Emphasis added.) His testimony at the hearing was consistent with that account. This inconsistency about time of return to Rivera's work area was not the only point of contradiction between Sonnier's testimony and that statement by Rivera. For, although the statement appears to recite all of the activities of the two men when together that morning, it makes no mention of any visit to building 138 to see Haines.

In his final statement Rivera adheres to his position that he and Sonnier had not returned from Weimer's office until after the morning break: ''ABOUT 8:30-35.'' He does, however, mention the visit to Haines. But he places it as having occurred after his return from the emergency assignment, over an hour after Sonnier claimed that it had occurred: ''I CAME UPSTAIRS ABOUT 9:20-25. . . . WE WENT TO BLDG 138 AND MIKE HAYNES WAS HAVEING [sic] A MEETING.'' When he testified, Rivera, in effect, retracted

that written account during direct examination, testifying, as had Sonnier, that the two of them had gone to building 138 immediately after leaving Weimer's office. During cross-examination this inconsistency was specifically pointed out to Rivera. But, given the opportuinity to explain it, he flatly claimed that there was no inconsistency:

> MR. BUSH: That's [the final statement's account of the point at which Rivera and Sonnier went to building 138] different than your testimony, isn't that right?
>
> A. No, it isn't.

During redirect examination an effort was made to repair that damage. At that point, Rivera testified that the events in that statement were not recounted in the precise order of occurrence. Yet, such a claim of cavalierness is not consistent with the circumstances that led to preparation of that statement. As described more fully in subsection III,C,1, infra, Respondent International's Representative Miller had suggested to Sonnier that there were deficiencies in the statement of Rivera appended to Sonnier's grievance. As a result, Sonnier set out to obtain a revised version. That revised version is the final statement with the account that conflicts with the testimony of Sonnier and of Rivera. Given its purpose, it seems unlikely that Rivera would not have recounted the events accurately and, when he claimed during redirect that he had not done so, he advanced no explanation for his purportedly cavalier treatment of the sequence of events of August 21. Equally significant, Sonnier had secured that statement from Rivera at Miller's suggestion. Its potential importance had been made plain to Sonnier by Miller. Given that fact, it hardly seems likely that Sonnier would simply ignore any asserted disregard for the accuracy in which the statement portrays the events of August 21.

When he testified Rivera at times balked at answering questions straightforwardly. He appeared to be concerned with providing answers that would aid Sonnier's case against Respondent Employer. His reason for doing so emerged in answering a question involving another incident: ''I started thinking, Hey, Wil is going to be up for my case . . . I didn't want Wil to think that I copped out.'' In other words, Rivera felt responsible for Sonnier's predicament, because it had resulted from events arising in connection with his (Rivera's) problem. Thus, as Sonnier had tried to help him, Rivera set out to testify in a fashion that would help Sonnier.

There is yet another plausible explanation for Rivera's lack of candor, one that explains Curtin's observation. I felt that Curtin, while not always consistent as to details, did testify honestly when he recounted having seen Sonnier and another person between buildings 2 and 12 on August 21. Indeed, all other considerations aside, it would be absurd to make a false report of having seen someone at a particular place if that person had not been there and might be able to refute that report with evidence of where he/she had actually been. Such a report would have caused Curtin to lose all credibility and, from his own perspective, impair his reliability with his own superiors.

Rivera testified that the emergency assignment had eventually led him to building 2 and that he had returned to building 13 by traveling through building 12: ''I came out this door [of building 2] and I headed out to building 12, the center of building 12 and then back into 13.'' Accordingly, Rivera's own testimony places him at one time that morning in the vicinity of the location where Curtin reported having seen Sonnier. Furthermore, Sonnier claimed that he had sat at Rivera's desk for the entire time that Rivera had handled the emergency and, moreover, testified that numerous people had passed while he sat there. Yet, Sonnier was unable to identify even a single one of those people and not one person appeared to corroborate Sonnier's assertion that he had been sitting at Rivera's desk that morning. In short, it is not implausible that, as time passed, Sonnier had become bored and had gone looking for Rivera, encountering him as he was walking from building 2 to building 12. As they met and chatted, they were observed by Curtin.

Such a meeting would also tend to explain Rivera's inconsistent efforts to explain what the two of them had done after the emergency job had been completed. It is undisputed that the union activity pass possessed by Sonnier did not allow him to go to the location where Curtin had observed him. However, at the time of giving his final statement, Rivera had no basis for believing that a visit to Haines's office placed after completion of the emergency work would not aid Sonnier by providing a plausible alternative location, outside of building 13, when observed by Curtin.

In fact, neither Sonnier nor Rivera testified with any specificity concerning what they had purportedly conferred about following completion of Rivera's emergency call. Indeed, it is difficult to construct a need for further discussion between them by that time. They had discussed it for almost an hour before conferring with Weimer about it. They agreed that they needed to meet with Haines before the subject could be pursued any further. Accordingly, so far as the evidence shows, the matter stood in abeyance by the time that Rivera was dispatched for the emergency call.

On August 24 Schultheiss met with Sonnier in the presence of Scott. Schultheiss testified that Sonnier was asked where he had been on August 21 between 6:35 and 10:10 a.m., to which he replied that he had been with Rivera that entire time; was shown or read the contents of Curtin's and Cohen's statements; and, was invited to submit a written statement describing his whereabouts between those hours that morning, to which Sonnier responded that he would submit one later, adding that, ''All you got is my word against Mark Curtin's word.'' Sonnier denied virtually all of Schultheiss' description of the August 24 meeting. Instead, claimed Sonnier, he had been told essentially only about the charge against him and that he was being suspended pending further investigation. In fact, Sonnier was suspended at the end of that meeting.

Nevertheless, certain factors tend to support Schultheiss's account of the August 24 meeting with Sonnier. A description of that meeting as recited by Schultheiss is contained in paragraph 14 of the joint statement prepared by Schultheiss and Scott, as quoted in subsection III,A, supra. That statement became a formal document in the disputes resolution procedure under the parties' contract. At no point did Sonnier specifically claim that any portion of that joint statement inaccurately set forth any of the pertinent facts underlying the dispute arising from his termination.

More significantly, although Sonnier never submitted a written statement to Respondent Employer following the August 24 meeting, he did submit a statement of his position in conjunction with his grievance. That is the statement writ-

ten on the factsheet, as quoted in subsection III,A, supra. His explanation on the factsheet concerning his whereabouts on August 21 is quite similar to the answer described by Schultheiss when Sonnier had been questioned on August 24 regarding his whereabouts on August 12: ''The day in question of my termination I was on a Union Activity Pass with a grievant.'' Consequently, both the answer attributed to him by Schultheiss during that meeting and his statement on the factsheet portray Sonnier as having been working with Rivera for the entire 3 hours and 35 minutes on August 12. Inasmuch as Respondents knew from Rivera's responses that Sonnier had not been doing so, it was not illogical for them to infer that Sonnier was concealing his true whereabouts for at least part of that morning.

During a meeting on August 25 Schultheiss notified Sonnier that he was terminated. By that time, Respondent Employer's investigation had disclosed that Sonnier had been released from work on August 21 to conduct union business with Rivera, that Rivera had been working away from Sonnier for almost an hour of that period, that Sonnier had not returned to his own work station during the period that Rivera had been working, and that Sonnier had been observed in an area where his union activity pass did not entitle him to go. These were the crucial facts, according to Schultheiss and Berger, that had led to the termination decision.

In contesting the lawfulness of Respondent Employer's motivation, the General Counsel points to a series of ancillary aspects of the termination, arguing that they qualify as indicia of a motivation that actually was an unlawful one. However, in the circumstances, these asserted indicia do not establish that conclusion. For example, no P-TAB was conducted before Sonnier's termination and P-TAB hearings are ordinarily conducted prior to termination decisions. But that had been the very point of the last chance agreement: ordinary procedures would be bypassed in the event of any future infractions in return for allowing Sonnier to preserve his job in April.

Of course, Respondent Employer did not investigate to ascertain the identity of the employee with whom Sonnier had been speaking between buildings 2 and 12 on August 21. Yet, Sonnier denied participating in that conversation and Curtin had not known that employee's identity. Given those facts, the record suggests no means by which Respondent Employer could have identified that employee. The General Counsel does not suggest a means of doing so and, accordingly, an argument faulting Respondent Employer's failure to ascertain that employee's identity is an empty one.

Nor is Sonnier's cause advanced by an argument that Rivera also violated employee activity pass requirements on August 21. There is no evidence showing a basis for Respondent Employer to suspect in August that Rivera might have failed to observe those requirements. In August, Sonnier did not defend his own infractions by pointing to similar misconduct by Rivera. Consequently, there was no reason for Respondent Employer to launch an investigation pertaining to Rivera's conduct. After all, unlike Sonnier, Rivera was not working under a last chance agreement.

Respondent Employer is faulted because Schultheiss continued investigating even after having gone to Sonnier's work area[7] and discovering that Sonnier was present there. However, Schultheiss was not without responsibilities. He was not free to simply ignore the report that he had received from Curtin, especially in light of the restrictions imposed on Sonnier by the last chance agreement. Schultheiss was not simply free of obligations such that he could ignore potential employee misconduct. Sonnier's presence at a proper location at one point in time did not mean that he had not been at an improper one earlier that morning. An argument to the contrary is similar to arguing that a motorist's observance of stop signs two through four is conclusive evidence that he/she did not ignore stop sign one.

Nor can it be said that Schultheiss somehow evidenced an unlawful motive by conducting an investigation until August 24 before contacting Sonnier about his version of the events of August 12. After all, the General Counsel's own method of investigating is to first collect the charging party's evidence before approaching the charged party for its evidence. Of course, that allows determination of the points to which responding evidence is needed, if at all, as opposed to simply collecting whatever evidence a party might want to submit. It constitutes meaningful investigation. Similarly, Schultheiss investigated to verify Curtin's report, and to obtain specific information before approaching Sonnier. Had Schultheiss immediately confronted Sonnier with Curtin's verbal report instead, I have no doubt that I would be confronting an argument that Schultheiss had acted with unseemly haste—that Sonnier had been compelled to defend himself against unconfirmed and uninvestigated accusations.

The fact that Sonnier had been suspended on August 24 pending further investigation does not advance the General Counsel's case. That seems to be Respondent Employer's regular practice, as illustrated by Stanger's suspension of Sonnier in March pending investigation of the latter's insubordination. Further, Schultheiss testified that he feared Sonnier might become disruptive if allowed to remain working in August after having been told that his conduct was being investigated. Given Sonnier's prior outbursts—directed at Scott and Salazar in December 1988 and during the last chance agreement meeting, as well as on October 5 at Respondent Local's hall, as described in subsection III,C,2, infra—that fear can hardly be characterized as unfounded. In any event, of itself, Sonnier's August 24 suspension did not inherently facilitate discriminatory termination of Sonnier, had Respondent Employer truly been so disposed. That is, in the circumstances, it was not necessary to suspend Sonnier

[7] To support the contention that Respondent Employer had been seeking a pretextual excuse to discharge Sonnier, it is argued ''that after Curtin's phone call, Schultheiss immediately left his office to try and catch Sonnier returning to building 13.'' Yet, that argument is undermined by the fact that, after Curtin's call, almost 30 minutes elapsed before Schultheiss arrived in Department 509. It is further undermined by the fact that Schultheiss went to that location, rather than to the area between buildings 2 and 12, where the rules infraction had been taking place at the time of Curtin's call, to ''catch Sonnier'' violating the rules.

In like vein, had Respondent Employer truly been seeking legitimate cause to pretextually discharge Sonnier, it seems likely that Cohen would have more carefully watched Sonnier between 6:35 and 10:10 a.m. on August 21. Instead, so far as the evidence shows, after signing in Sonnier at 6:35, Cohen went about performing his own duties, oblivious to Sonnier and his activities until again presented with the latter's pass for signature at 10:10 a.m.

before an unlawfully motivated termination could have been effected. Rather, the suspension is an analytical nonissue.

Sonnier's ''Employee Status Change Notice'' listed his termination as being for ''UNSATISFACTORY CONDUCT.'' It is argued that such a phrase effectively fails to notify an employee of the reason for termination, thereby creating another indicia of unlawful motive. However, such an argument disregards what had been told to Sonnier during the August 24 meeting about Curtin's report and the other information collected to that point by Schultheiss. Consequently, by August 25 Sonnier was well aware of the basis for Respondent Employer's dissatisfaction. Moreover, it is undisputed that the phrase ''unsatisfactory conduct'' is regularly one utilized on employee status change notices whenever an employee is terminated for improper conduct by Respondent Employer. In these circumstances, its use in this particular case hardly can be faulted as concealing the reason for termination.

In subsection III,B,2, supra, I pointed out that Curtin disliked Sonnier, primarily because he felt that Sonnier's union activities interfered with Respondent Employer's work. I further stated that it appeared to me, based on his personal perception of hostility that he believed to be necessarily inherent in union-employer relations, that Curtin had concluded that he might be able to advance his own interests by antagonism toward Sonnier. I have no doubt that this attitude led Curtin to make his report about Sonnier's location on August 12. However, Curtin's motivation for making that report does not taint Respondent Employer's decision to terminate Sonnier.

In the first place, there is no evidence that Curtin's supervisors had known about his personal attitude toward Sonnier and his personal agenda. There is no evidence that Curtin had ever spoken to them about it. There is no evidence from which it can be inferred that they likely would have known about it. Second, Curtin had merely reported a fact on August 12. There is no evidence that he made any recommendation concerning disciplining Sonnier. Nor is there evidence that, aside from writing a statement about his observation, he had participated further in the sequence of immediate events that led to Sonnier's termination on August 25. The crucial motivation is that of Schultheiss and Berger. And a preponderance of the evidence does not show that they had been influenced by any consideration proscribed by the Act. Sonnier had been lawfully obliged to observe certain standards of conduct under company rules and, more particularly, under the last chance agreement. He disregarded those obligations. He was terminated solely for that reason. Therefore, a preponderance of the credible evidence does not support the allegation that his termination violated Section 8(a)(1) and (3) of the Act.

C. *The Unlawful Conduct Attributed to Respondent Unions*

1. Withdrawal of Sonnier's grievance

In connection with the withdrawal of Sonnier's termination grievance, the General Counsel proceeds on two fronts: that Respondent Unions acted arbitrarily by perfunctorily processing it and, in another theater, that Respondent Local's officials withdrew the grievance in retaliation for Sonnier's opposition to them through the UP-caucus. A preponderance of the evidence supports neither argument.

Sonnier described acrimonious exchanges with officials of Respondent Local. For example, bargaining committee chairman Salazar had been present when Sonnier and Schultheiss met concerning the expendables list, as described in subsection III,B,1, supra. In the course of that meeting, testified Sonnier, he had been accused by Salazar of ''restricting production'' and committing ''a violation of company rule[s] and that I could get terminated for that.'' According to Sonnier, Salazar had continued by warning, ''Don't ever get terminated because I might not get [you] back.'' While an argument is made that Salazar did not deny having made those remarks to Sonnier, page 1156, lines 22 through 23 of the transcript show that Salazar did deny ''ever [saying] anything like that to Mr. Sonnier,'' ever accusing Sonnier of restricting production, and ever saying that he might not be able to get Sonnier's job back.

Sonnier testified that following his argument with Scott the, as it turned out, ubiquitous Thurron Mallory had reported that Scott ''went to the bargaining committee room and he was telling the people [there] that they were going to try to get [Sonnier] decertified as union steward.'' However, as discussed in subsection III,B,1, supra, Scott had not acted improperly in processing employee grievances on the day that he had been ''confronted'' by Sonnier. Given that fact, and the further fact that Scott ended up with a verbal reminder as a result of being ''confronted'' by Sonnier, it is hardly surprising that he might have been upset at that time. Nonetheless, even if Mallory actually did make such a report to Sonnier, and even if that report had been accurate, there is no basis for concluding that Scott's words had been improper. Sonnier was an official of Respondent Local. He had no right to utilize that position as a means of barring other officials form performing their own duties. They were entitled to react negatively when Sonnier did so.

It is significant that Sonnier did not claim that Mallory warned that Scott had said that he would attempt to have Sonnier removed as steward. Instead, Scott is described as having said that he would try to have Sonnier ''decertified.'' Such an ambiguous term could as easily mean an appeal to the membership to vote for Sonnier's removal as meaning preemptory removal without such an election. But, an appeal to the membership would not likely be unlawful. See *Sheet Metal Workers v. Lynn*, 488 U.S. 347 (1989). That is, if a majority of the membership voted for Sonnier's removal as steward, because of inappropriate conduct while serving in that capacity, there would have been nothing unlawful in that action, nor in the appeal for the membership to so vote.

The significant point regarding these purported remarks by Salazar and Scott is that they pertain to incidents that, so far as the record discloses, appear to have been forgotten, as were the incidents that had assertedly provoked them, by August. There is no evidence that Scott ever moved to decertify Sonnier as steward. Salazar never again mentioned the expendables list incident to Sonnier nor, so far as the record discloses, to anyone else. Moreover, none of those asserted remarks could have been provoked by Sonnier's formation of UP. For, there is no evidence of activity to form UP, nor knowledge of Sonnier's activities to promote its formation, as early as December 12, 1988.

In that connection, much is made of the sincerity of Scott in representing Sonnier in the latter's subsequent difficulties with Respondent Employer. Yet, while all of Respondent

Unions' officials displayed concern as a matter of principle about discipline of a steward, Scott appeared to have been the most sensitive to the implications of stewards being disciplined. In fact, it appeared that, if he had his choice, Scott would have taken a steward's termination grievance to arbitration as a matter of principle, no matter the likelihood of success in doing so. Consequently, any predisposition on the part of Scott in processing Sonnier's grievances operated in the latter's favor, rather than to Sonnier's detriment. There is no basis for faulting Respondent Local because Scott handled Sonnier's grievances, as cochairman of the bargaining committee.

On the other hand, consistent with his own apparent intolerance of those who disagreed with his own views, noted in subsection III,B,2, supra, Sonnier quickly developed disdain for Respondent Local's officials, especially for Salazar. This became obvious as early as December 12, 1988, when, due to Scott's involvement in the Department 509 confrontation, Salazar had attended the meeting at which Sonnier actively received the verbal reminder. He testified that when he had tried to calm Sonnier during that meeting, he was told by Sonnier to ''shut the f— up. You ain't telling me shit. I don't have to listen to you. Just shut the f— up. You can get out of here if you want.'' Called as a rebuttal witness, Sonnier denied having made some remarks attributed to him. But he did not deny having made those remarks to Salazar. To the contrary, when testifying earlier, he admitted having told Salazar, on that day, ''I didn't want his representation and I asked him to leave.''

Nor was that type of remark by Sonnier an isolated one. For example, a similar remark, though denied, was attributed to Sonnier during the April meeting in which the last chance agreement was signed by him. As noted in subsection III,B,3, supra, at one point Respondent Unions' officials had met separately with Sonnier to persuade him to abandon his insistence that his special agreement be signed as the price for his signing the last chance agreement. Howser, corroborated by Salazar, testified that when he attempted to persuade Sonnier of the wisdom of foregoing the special agreement, Sonnier had retorted, '''Howser, all you got to do is stay white and die,' as if you know, don't say anything, that's all you got to do.''

Obviously, Respondent Unions' officials were not pleased by Sonnier's remarks to them. Yet, in contrast to his attitude toward them, it did not appear and there is no credible evidence showing that they harbored ongoing hostility toward him because of his remarks. More important, there is no basis for concluding that they had been disposed to compromise their own professionalism by failing to try to properly represent Sonnier. In fact, it had been the pleas of Salazar and Scott that had persuaded Respondent Employer to continue employing Sonnier in April, despite the strength of the case against him for insubordination.

That Sonnier disliked Scott and Salazar did not entitle him to representation by officials other than the duly elected ones. So far as the record discloses, there was no basis for a belief that they would not try their best to represent him in the same fashion as they represented other employees. That is, there is no basis for concluding that they were incapable of according him the proper representation which they were obliged by the Act to provide.

In a related area, despite Sonnier's opposition through UP to Respondent Local's officers and their New Horizons caucus, UP's activities posed no threat to those officers and there is no evidence that they perceived its activities as a threat to their continued incumbency. Nor is there any evidence that any of them harbored animus toward Sonnier because of his criticisms. As Griffith credibly testified, those types of criticisms were neither novel nor particularly disturbing, given the size of the bargaining unit and the ongoing creation of minor caucuses whenever relatively small groups of employees became disenchanted with incumbents' decisions and policies. In short, Sonnier's opposition to the incumbents was neither abnormal nor consequential, with the result that they had no particular reason to become antagonistic toward him.

In an apparent effort to establish that animus against him did exist, and did influence Respondent Local's decision to withdraw his termination grievance, Sonnier testified that on October 5 Scott had said that he thought that Sonnier had ''a good grievance, that's why he gave it to'' Salazar. Of course, if Scott had, in fact, made that statement, it tends to refute any argument that Respondent Local acted improperly in allowing Scott to process that grievance through its initial stages. Such a statement shows obvious support for Sonnier's grievance.

Moreover, as stated above, I felt that Scott did display singular concern about grievances arising from the discipline of stewards, as an institutional matter. That is, he appeared to feel that even in situations where a union would be unable to prevail in arbitration, it should never abandon a steward's grievance, no matter how meritless. To Scott, this should be a paramount political practice of every union. As a result, it is not surprising that he might, as he conceded, have told Sonnier some months after August that the latter's grievance had been withdrawn for political reasons. As discussed below, Salazar withdrew the grievance because he felt that it could not be won. To Scott such a choice was not politically correct and it was to that point that he appeared to be addressing the ambiguous ''political reasons'' when he later spoke with Sonnier: in Scott's view, Salazar had acted in the interest of preserving union credibility in resolving disputes when he should have acted to support a discharged steward. There is no evidence that by that remark, Scott had been referring, or had intended to refer to, internal union politics.

In Scott's sense of the phrase Salazar's decision can be characterized as having been a political—though not an unlawful—one. He testified that when he had gotten the file from Scott, after the joint statement had been prepared and signed, he had reviewed it. In doing so, he was not oblivious to Scott's view: ''I was concerned about the employee involved and the facts that were presented and the employee was a union steward, an elected union steward.'' Nevertheless, an obvious problem was presented by the contradiction between Sonnier's statement to Schultheiss that he had been with Rivera for the entire 3 hours and 35 minutes on August 21 and, on the other hand, Curtin's report and Rivera's statements refuting that statement by Sonnier. In short, Salazar believed that Respondent Unions confronted a situation where the grievance could not be won due to the grievant's own unreliability. The General Counsel faults him for analyzing the matter by accepting facts most favorable to Respondent Employer. But those were the facts that Respondent

Unions would have to confront were the grievance to be processed further. Salazar could not simply ignore them.

However Salazar did not simply rely on his own evaluation. He took the file to Griffith, Respondent Local's president. Before his election to that position, Griffith had been bargaining committee chairperson. While serving in that position, he had achieved unusual success when processing grievances against Respondent Employer. In reviewing the file, testified Griffith, he had tried, as had Salazar, to ''put myself in the position of if I was sitting in front of an arbitrator how I would argue that case.'' But, after doing so, he concluded ''there was no reasonable expectation of success.'' He returned the file to Salazar, saying that he would withdraw the grievance if it was his decision, but that the decision was Salazar's to make as bargaining committee chairperson.

Salazar did not content himself with his own and Griffith's opinion. He described the situation to Howser, Respondent International's representative. The latter listened and then said that the decision was Salazar's to make. But Howser was not unaware of the view—espoused by Scott—that the politically correct position would be to process a steward's grievance through arbitration, regardless of its merit. Thus, he cautioned that Salazar should make his decision on the merits of the grievance and should not simply buck it further through the system, just to ''get rid of'' it.

After further reflection, Salazar decided on October 4 to withdraw Sonnier's grievance. He notified Sonnier of that decision by letter sent on that same date. In explaining that decision, Salazar testified:

> I decided to withdraw the grievance because I felt we couldn't move forward with it.
>
> . . . .
>
> Because of what I've read in the joint statement of facts and the witness' testimony and the evidence the company had against our employee.
>
> . . . .
>
> That we could not win this grievance in arbitration.
>
> . . . .
>
> Because by the steward's own employee he was with . . . he says, ''the steward left him'' and that's just not done at [Respondent Employer], unless the shift ends or there's a break or we just don't have employees. There's no explanation for that.

Both Griffith and Howser appeared to be testifying honestly about their advice to Salazar. Neither one appeared influenced by past experiences with Sonnier when they made their recommendations. Salazar denied specifically that his decision to withdraw the grievance had been influenced by Sonnier's caucus membership and opposition to TEAM and TQMS. I credit the testimony of these three officials. In particular, Salazar impressed me as being sincerely committed to proper performance of his responsibilities.[8]

Not only did Salazar credibly advance his explanation for having withdrawn the grievance, but objective considerations support his testimony. Sonnier's initial assertion to Schultheiss that he had been with Rivera for the entire 3 hours and 35 minutes on August 21 was contradicted directly by Rivera's statements. It is undisputed that under the union activity pass procedure Sonnier should have returned to his own station when Rivera returned to work. Consequently, of itself, the latter failure constituted a separate violation of the rules under which employee-union officials are released from work, but continue to be paid for transacting union business. The difficulty posed for Respondent Unions by these facts was only compounded by Curtin's report that Sonnier had been seen in a location where, it is undisputed, his pass did not entitle him to go that morning. Of course, Sonnier denied that fact. But his denial compromised his own credibility by creating a contradiction with Rivera's statements. That is, there was every objective reason for Respondent Local to believe that Sonnier's lack of candor to Schultheiss would impair the credibility of whatever other contradicted assertions that he might make, such as denying having been between buildings 2 and 12 at one point on August 21.

Of course, instead of trying to objectively evaluate the likelihood of success in arbitration, Salazar could blindly have pushed the grievance further through the contractual disputes resolution procedure, as Scott appeared to favor as a matter of political principle. However, so mechanical an approach risks undermining the disputes resolution procedure which, the Supreme Court pointed out in *Vaca v. Sipes*, 386 U.S. 171, 191 (1967),

> contemplate[s] that each [party] will endeavor in good faith to settle grievances short of arbitration. Through this settlement process, frivolous grievances are ended prior to the most costly and time-consuming step in the grievance procedures.

Not only might such a mechanical approach deter parties from ''provid[ing] for detailed grievance and arbitration procedures of the kind encouraged by L.M.R.A. § 293(d),'' Id. at 192, but, of more immediate concern to Respondent Unions, it could undermine Respondent Employer's confidence in their good faith when processing grievances, thereby reducing their ability to retain Respondent Employer's cooperation in achieving early resolutions of future grievances and, in turn, impairing their ability to ''represent[] the employees in the enforcement of [their] agreement.'' [Citation omitted.] Id. at 191.

The General Counsel argues that Sonnier's situation might have been improved had Respondent Unions' officials become more actively involved, specifically by talking to Sonnier and Rivera before withdrawing the grievance. Yet, that argument is partially undermined by Sonnier's own testimony. He admitted that he and Miller had discussed the Rivera statement that Sonnier had submitted with his grievance. Moreover, he further conceded that Miller had criticized that statement's generality, particularly its failure to recite specific times. Although Sonnier claimed that their conversation had not occurred until September 24, so late a date for it was refuted by Miller's testimony that he had been on vacation from September 22 to late October.[9]

[8] Given the fact that Salazar testified candidly concerning his actual motive for withdrawing the grievance, I place no weight on characterizations of that decision by former counsel for Respondent Local.

[9] This was not the lone conflict between Sonnier and Miller regarding this conversation. Sonnier claimed that Miller had promised ''that if I had a statement that was—that could pinpoint the times that he would probably have me back the next day.'' Miller denied

Miller credibly testified that the conversation described by Sonnier had occurred ''either real late [in] August or the first part or a week or two in September.'' More significantly, Miller testified that Salazar had been ''sitting there'' during that conversation. Accordingly, there obviously had been conversation between Sonnier and Respondent Unions' officials about the events underlying the grievance relatively soon after it had been filed.

The General Counsel further contends that Respondent Unions should have obtained the more detailed statement from Rivera, as opposed to letting Sonnier do so. To support that contention, the General Counsel argues that failure to do so demonstrates a lack of proper attention to the grievance's investigation. Yet, Sonnier did not dispute Miller's testimony that after the latter suggested securing a more detailed statement from Rivera, Sonnier had promptly said, ''that he was a friend or knew Rivera well and that he would secure that statement or attempt to secure [it].'' In light of that representation, it is not surprising that Respondent Unions would rely on Sonnier, as the person best situated to obtain Rivera's cooperation, to secure a more detailed statement. In the circumstances, that reliance was hardly derelict. Indeed, had one of Respondent Unions' official decided to contact Rivera, instead of Sonnier, I have no doubt that Sonnier would now be complaining that they deprived him of the opportunity to obtain a more detailed statement from Rivera.

In the final analysis, short of trying to fabricate evidence, there was little left for Respondent Unions to investigate by the time that the grievance had been filed on August 25. Respondent Employer already had Curtin's report stating that Sonnier had been at an improper location on August 21. Investigation of that report had disclosed the further impropriety that Sonnier had not returned to his own work location when Rivera had resumed working for approximately an hour that morning. That further impropriety refuted Sonnier's already made statement to Schultheiss that he had been with Rivera for the entire time between 6:35 and 10:10 a.m. on August 21. Consequently, by August 25 Respondent Unions were confronted by a material contradiction of which Respondent Employer was well aware. No further investigation could repair that damage. ''Because the inconsistenc[y] came from [Sonnier] h[im]self, there was little in the way of investigation that [Respondent Unions] could do to strengthen [his] case.'' *Diversified Contract Services*, 292 NLRB 603, 605 (1989).

Neither the Board nor the courts have ever imposed a particular procedure that must be followed by bargaining agents in investigating grievances. Accordingly, there is no basis for concluding that Respondent Unions somehow violated the duty of fair representation by failing to follow a particularly prescribed procedure in processing Sonnier's grievance. Despite the damaging contradiction, Salazar sought additional opinions as to whether it could be won. But no approach was suggested that that might yield a likelihood of success. Confronted with that situation, Salazar withdrew the grievance. Of course, Scott would not have done so and others, as well, might characterize Salazar's decision to do so as having been erroneous. However, ''[a]lthough this decision may be seen by some as an error, it was at most an error of judgment and not evidence of breach of the duty of fair representation.'' Id. And in the final analysis, I conclude that Salazar's decision was no error at all, but was a correct appraisal of the grievance's worth, given the last chance agreement's provisions and the clear inconsistency between Sonnier's representation to Schultheiss and Rivera's and Curtin's statements.

A final aspect of the allegedly unlawful refusal to process Sonnier's grievance arises as a consequence of his exclusion from membership, discussed more fully in subsection III,C,2, infra. A grievant has the right to appeal the bargaining committee chairperson's disposition of a grievance to the general membership, at its monthly membership meetings. However, that right exists only for grievants who are members of Respondent Unions, and there is no allegation that restriction of that appeal right to members is, of itself, unlawful.

Because Respondent Local's jurisdiction—and, thus, its membership—is restricted to employees of Respondent Employer, as described in subsection III,A, supra, once Sonnier's grievance was withdrawn, and he no longer had a reasonable expectancy of employment by Respondent Employer, Respondent Unions' Long Beach-based officials interpreted his membership as terminated. That interpretation turned out to be erroneous, although not unlawful, as described in subsection III,C,2, infra. However, it did effectively leave Sonnier unable to appeal withdrawal of his grievance until early 1990, since, as a nonmember, he was not allowed to attend membership meetings. However, a preponderance of the evidence will not support the conclusion that such a delay in his ability to exercise that right arose from action that violated the Act.

Sonnier described only one occasion when he had assertedly tried to make such an appeal. That occurred, testified Sonnier, on October 26 when that month's general membership meetings occurred. It is undisputed that he attended both sessions of the two meetings conducted that day, the first for retirees and for second- and third-shift employees, and the second for first shift employees.

Sonnier testified that when he had arrived at Respondent Local's hall that day, he had run into Griffith who inquired why Sonnier had come to the hall, to which Sonnier replied that he ''came to appeal my grievance.'' However, Griffith testified that, in response to his question, Sonnier had replied only, ''I have a right to be here.'' According to Griffith, when he specifically pointed out that Sonnier did not ''have a grievance in the system . . . [and was] not a member any longer,'' Sonnier had retorted, ''Well, I'm a guest.'' Griffith's objection to Sonnier's attendance at the meetings that day, as discussed in subsection III,C,2, infra, was rooted in concern that he might disrupt the meetings, in light of certain conduct on October 4 and 5, also described in that section. In the course of providing that explanation, Griffith specifically pointed out, ''If he had been there to appeal the withdrawal of his grievance, I would certainly have allowed that, but his stated reason for being there was he was a guest.'' Consequently, even though he no longer regarded Sonnier as a union member on October 26, Griffith credibly testified that he would have allowed Sonnier to exercise a membership right of appeal, but Sonnier did not say that he wanted to do so.

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having made such a reckless representation, explaining, not without logic, ''I've been in this business long enough. I don't guarantee anything. I would never made a statement to any discharged employee that I'll guarantee I'll get your job back.''

Several objective factors tend to support Griffith's version of his exchange with Sonnier, and to refute Sonnier's assertion that he had wanted to appeal his grievance's withdrawal to the membership on October 26. First, Sonnier had a purpose for attending those meetings that was unrelated to any effort to appeal withdrawal of his grievance. Nominations for internal election of Respondent Local's officers were being accepted at the October 26 membership meetings and he wanted to submit his name as a nominee for the bargaining committee. Thus, his attendance at those meetings, of itself, is not necessarily an indication of an intention to appeal his grievance's withdrawal. Second, Mills supported Sonnier's assertion that he had raised his hand for recognition during the first meeting. But she did not claim that she had understood that his purpose in doing so had been to appeal his grievance's withdrawal. Third, between meetings that day, Griffith's administrative assistant, Bernard Clarke, asked Sonnier why he was remaining at the hall. Mills had been present during this exchange. However, neither she nor Sonnier described the latter as making any mention of an appeal when he replied to Clarke. Instead, Sonnier testified, ''I told him that I am a member in good standing,'' and Mills testified that Sonnier had replied only, ''because I want to be here. I'm supposed to be here.''

Sonnier never claimed that he had been aware as early as October 26 of his right to appeal to the general membership. The first mention of such a right did not occur until December 7, in Forrest's letter to Sonnier in which she pointed out that such a right existed. But, as she explained in that letter, the right existed for only 60 days after Sonnier had become aware of his grievance's settlement. By December 7 that 60-day period had expired. Consequently, I am convinced that, in an effort to resurrect his by-then elapsed appeal period, Sonnier tailored his testimony to portray that he had been prevented from exercising his appeal right at the October 26 meetings of the general membership.

In any event, Sonnier ultimately did receive the opportunity of appeal to the general membership. As described in subsection III,A, supra, based on their own interpretation of applicability of ''out of work'' credits, Respondent International's Washington, D.C. officials concluded that Sonnier's membership had not immediately terminated upon withdrawal of his grievance, even though he no longer actually worked for Respondent Employer. As a result, Sonnier obtained a right to appeal to the general membership which voted to reinstate his grievance.[10]

Respondent Employer refused, as was its right, to allow the grievance to be revived, asserting that it deemed the matter settled. Although this did not occur until almost 6 months after the grievance had been withdrawn, there is no basis for concluding that Respondent Employer would likely have been more disposed to revive the grievance in October and November. To the contrary, a preponderance of the credible evidence shows that at that earlier time Respondent Employer felt that it had been amply justified in terminating Sonnier and that the grievance concerning that termination had no merit.

In sum, a preponderance of the credible evidence does not support the allegation that the grievance's processing and withdrawal had been the result of discriminatory motivation nor the product of some other breach of the duty of fair representation.

2. The deprivation of Sonnier's membership

The General Counsel argues that Sonnier was unlawfully deprived of union membership and, as a result, denied ordinary rights of membership, such as attending union meetings, being nominated for union office and voting in internal union elections. Respondent Unions do not dispute that Sonnier's membership had been deemed terminated on October 4 and, further, acknowledge that he had been barred from all membership rights as a consequence. However, they argue, inter alia, that his membership had not been terminated unlawfully. A preponderance of the evidence supports that argument.

The Act does not prohibit labor organizations from restricting classifications of employees who are eligible for membership, so long as those restrictions reflect a legitimate union interest and do not injure any policy Congress has embedded in the labor laws. See, e.g., *NLRB v. Marine & Shipbuilding Workers*, 391 U.S. 418 (1969). Here, Respondent Local's representation jurisdiction is restricted to Respondent Employer's employees. Concomitantly, as set forth in subsection III,A, supra, its membership is likewise restricted to employees of Respondent Employer. Consistent with that membership restriction, it is not disputed that when an employee is terminated by Respondent Employer, that employee no longer is eligible for membership in Respondent Local. The complaint does not challenge the legitimacy of Respondent Local's membership eligibility, nor its rule precluding employees from membership upon termination of employment by Respondent Employer.

However, as quoted in subsection III,A, supra, article 16 of Respondent International's constitution creates an exception in certain situations to automatic membership termination by providing ''out of work'' credits. Griffith testified that his understanding through 1989 had been that those credits were not available to discharged employees: ''You have no likelihood of returning to work, no possibility of returning to work. It didn't seem very logical that you remain a member of the union.'' The General Counsel argues that such an understanding is ''patently rediculous.'' But that characterization is not supported by examination of article 16.

As currently written, the interaction of sections 18 and 19 of article 16 are not altogether clear respecting application of ''out of work'' credits to terminated employees. Under section 18 it is clear that employees on checkoff are entitled to those credits when laid off, on leave of absence, or discharged. Yet, by its terms, section 19 extends the right of ''continuous good standing'' only to employees who are on ''layoff or leave,'' omitting any specific mention of ''dis-

[10] Griffith admitted that this had upset him. However, that was not for some nefarious reason pertaining to Sonnier. Griffith explained that if grievance settlements began to be submitted to the membership and if the membership began reversing their bargaining committee's resolutions, the grievance procedure would be undermined. That is, Respondent Employer might become reluctant to settle grievances, because it might later be confronted with ongoing efforts to process grievances that it believed had been settled. Rather than reflecting an improper motivation on the part of Griffith, that explanation is an expression of valid concern about possibly ''destroying the employer's confidence in the union's authority,'' as acknowledged by the Supreme Court in *Vaca v. Sipes*, supra.

charged'' employees. Where items are listed in one part of document, be it a contract or statute, and only some of them are enumerated in another provision of that same document, it is not illogical to interpret that provision as being inapplicable to the omitted items. See, e.g., *General Motors Corp. v. U.S.*, 496 U.S. 530, 541 (1990). ''The proximity of the changes suggests that the variation in wording was not accidental.'' *U.S. v. Hohri*, 482 U.S. 64, 70 (1987). Consequently, it is not illogical to interpret article 16 as not extending membership in ''continuous good standing'' to discharged employees.

Of course, it turned out that Respondent International interpreted its constitution as extending continuous membership to terminated employees, as well as to employees on layoff and leave, who qualified for out of work credits. Yet, Griffith testified that such an interpretation constituted a change: that originally membership had been terminated upon withdrawal of a discharge grievance and that he learned in 1990 that there had been a change, possibly by constitutional amendment, in the late 1970s in that interpretation. In advancing that explanation, Griffith appeared to be testifying truthfully. Nothing in the record shows that he—or any other Long Beach-based official—had become aware of that change. Nor does the record show that prior to 1990 Respondent Local had been allowing discharged employees to continue as members after grievances concerning their terminations were withdrawn or finally rejected. In short, the evidence shows no more than that denial of membership to Sonnier resulted from a mistake, but a good-faith one. Of itself, mistaken interpretation of membership eligibility does not constitute injury to a policy embedded in the labor laws. Indeed, the General Counsel does not contend that good-faith mistaken interpretation of membership eligibility violates Section 8(b)(1)(A) of the Act.

What the General Counsel does contend is that Sonnier had been arbitrarily deprived of his membership because of antagonism arising from his opposition to Respondent Local's officers and their support for Respondent Employer's employee involvement programs. However, that contention is not supported by a preponderance of the evidence. First, as concluded in subsection III,C,1, supra, the credible evidence does not show that Respondent Unions' officials were willing to compromise their integrity as union officers and to retaliate against Sonnier because of his formation of, and participation in, UP's activities, nor because of opposition to programs that led him to engage in those activities. Second, in the circumstances reviewed above, the seemingly abrupt termination of his union membership was the result of neither arbitrary action nor illogical interpretation of Respondent International's constitutional provisions. Finally, some of the October and November events about which Sonnier complains resulted from belligerent and unprotected conduct directed at Salazar by Sonnier and certain others who supported him.

It is undisputed that on October 4, Sonnier and four other UP members—Mills, Tammy Sphax, Chris Cobos, and Roger Espinoza—went to Salazar's office to inquire about the status of Sonnier's grievance. Of course, that had been the date of the latter's decision to withdraw the grievance and of his letter notifying Sonnier of that fact. However, during his meeting with those individuals, Salazar admittedly did not disclose his decision. Instead, he told them that he was still evaluating whether or not to proceed further with the grievance.

Salazar testified that he had chosen to be less than candid at that time because he had become concerned—more accurately, frightened—by the conduct of Sonnier's group. Thus, he testified that, after he had initially told them that he did not discuss grievances with persons other than the grievant, they had become abusive and threatening. Sonnier and Mills each denied the latter assertion. However, certain undisputed and admitted facts tend to support Salazar's testimony to that effect.

The outstanding such fact is Sonnier's admission that Salazar had threatened to call the police. That occurred, testified Salazar, because when he had asked the group to leave his office on account of their conduct, they refused to do so and he called the police, or at least picked up the phone to do so, at which point the group did leave. It is undisputed that the police had never previously been called to Respondent Local's hall. That Salazar had chosen to do so on this particular occasion strongly tends to show that Sonnier and his group had engaged in conduct that was unusually threatening.

Second, Salazar testified that, as the meeting progressed, Cobos had started to close the door and that when he asked Cobos to leave it open, the latter had become threatening. Although Sonnier and Mills denied that any member of their group had raised his/her voice or had threatened Salazar during this meeting, Cobos did not appear as a witness to deny having engaged in that conduct. Further, Mills conceded that, in fact, someone other than Salazar had closed the office's door during the meeting and that Salazar had said that he wanted the door left open.

Third, Salazar testified that after the meeting he had made an effort to ascertain the identities of those group members, particularly Cobos, whose names he had not known. In fact, he presented a document on which he had written the names, addresses, and phone and badge numbers of Cobos and Espinoza. He testified that he had obtained that information by describing their physical appearances to officials who were able to identify them. It hardly seems likely that Salazar would have gone to the trouble of making such an inquiry if his October 4 meeting with the group had been as temperate as Sonnier and Mills portrayed it.

Finally, so unusual had been that meeting that it was still being discussed at the hall the following morning. As a result of hearing such discussions, Griffith learned about it. In an ensuing conversation, Salazar related that his meeting with the group on October 4 had been ''a very threatening one'' and that for that reason, ''he just didn't think it was a good time to be giving [the grievance withdrawal decision] to them and he had met his obligation by mailing it certified mail and that Sonnier would get it the next day anyhow.''

Griffith did not agree with that last assertion. While agreeing that Salazar did not have to put up with the abusive behavior that he heard had occurred on October 4, he did feel that it was Salazar's ''obligation to tell'' Sonnier about the decision to withdraw the grievance. Salazar agreed. As the monthly stewards council meeting was scheduled for that afternoon, Salazar took advantage of Sonnier's attendance at it to inform him of the grievance's withdrawal.

The complaint does not allege that an independent violation of the Act occurred when Salazar failed to notify

Sonnier on October 4 of the grievance's disposition. However, it does allege that several unfair labor practices were committed on the following day: refusing to supply Sonnier with copies of his grievance and accompanying documents, threatening Sonnier and others with arrest if they did not leave the hall, expelling Sonnier from union membership, and denying Sonnier membership rights, such as access to the hall and the right to attend membership meetings. All but the first of these allegations are based on admitted facts. However, no violation of the Act resulted from any of the conduct on October 5.

As to the first two allegations, after taking Sonnier into his office on October 5, Salazar explained that he thought Sonnier had violated the last and final chance agreement and, consequently, that ''I didn't think we could win at arbitration.'' Sonnier testified, ''I immediately ask[ed] him for a copy of my grievance.''[11] Salazar, however, testified that, following notification of the grievance's withdrawal, Sonnier had left the office for a moment and had then returned, saying ''You'll be sorry for this. You're going to hell.'' While Sonnier denied having physically threatened Salazar on October 5, he admitted having left the office and then having returned. Moreover, he did not specifically deny having directed those comments at Salazar.

Before returning to Salazar's office, Sonnier had telephoned Mills. She testified, ''He told me that [Salazar] had withdrawn his grievance from the system and should he get *a copy of it* and I said yes.'' (Emphasis added.) Mills and Tammy Sphax then came to the hall. In the meantime, as described above, Sonnier had renewed his request for ''a copy of my grievance,''[12] but Salazar refused to give one to him. Salazar testified that, in making that request, Sonnier had been ''loud and yelling and cursing, just like he did the day before.'' Interestingly, although Sonnier had denied specifically having engaged in such conduct on October 4, he did not deny have done so on October 5. Instead, he denied only, as set forth above, having physically threatened Salazar on the latter date. More significantly, he did not deny that he had been told by Salazar on October 5, ''until you start acting like a gentleman, we don't have anything to say,'' and, further, ''I've already mailed you . . . what's required of me. As chairman, I've mailed you a copy of your grievance and your answer. It's certified mail. You'll get it probably today.''

Salazar testified that because Sonnier kept talking ''real loud'' and ''walking toward me at a fast pace,'' he called the sheriff. Mills testified that by the time she arrived at the hall, she was told by Scott that Salazar had called the sheriff. Accompanied by Sphax, she went into Salazar's office and asked why Salazar would not give Sonnier ''a copy of the papers,'' to which Salazar replied, ''he wasn't going to give him anything.'' She then asked Howser, who had been present during some of the exchange, ''why didn't he give him a copy, that's what the procedure was. He said their procedure was to go through the mail and it was in the mail and he wasn't giving him anything.'' There is no evidence that this had not been Respondent Unions' normal procedure: to mail a copy of the grievance to the grievant at the time of notifying him/her of a grievance's withdrawal.

When the two sheriff's deputies arrived, Sonnier renewed his request for ''a copy of my grievance'' and Salazar said that he had already sent the information that Sonnier wanted, adding that Sonnier no longer was employed by Respondent Employer and was no longer a member of Respondent Local. The latter remark was repeated to the deputies by Griffith who came into the office for a few minutes as the argument progressed. Griffith admittedly added that Sonnier had no legitimate business there and should be arrested for trespass if he did not leave.

This portion of the meeting concluded when, notwithstanding normal procedure, Howser persuaded Salazar to hand Sonnier a copy of his grievance. However, testified Salazar, Sonnier suddenly made additional requests:

> So finally after about five minutes of Don's coaching, I went and gave Wil a copy of his grievance. Not the withdrawal paper, just the grievance because that's all he was asking for. I said, ''Here you are and I want you to leave.'' He said, ''F— you. You mother f—er. This isn't what I want. I want everything. I want it all right now. You got to give it to me. I said, ''That's all your [sic] getting. You're going to have to leave.''
>
> And the sheriff said, ''Mr. Sonnier, you got what you asked for. I think it's time for you to leave.'' And he said ''I'm not leaving.''

Although Sonnier denied that he had been given a copy of the grievance that day, he did not deny any other aspect of Salazar's foregoing description. Mills did not deny any aspect of Salazar's account, including that Sonnier had ultimately been given a copy of his grievance. To the contrary, she testified that she had intervened to persuade Sonnier to leave, pointing out that nothing could be gained by staying.

Both Mills and Sonnier described certain remarks that occurred afterward. For example, she attended the stewards council meeting, but was ruled out of order, because not a member of the council, when she asked Scott about the reason for withdrawal of Sonnier's grievance. There is no contention, nor evidence to support a contention, that the ruling had not been a correct one under Respondent Local's ordinary procedures. Mills further testified that during that meeting Mallory had again popped up, this time purportedly stating to the council,

> that out of his thirty-five some years working at [Respondent Employer] he had never seen anything like that before. That no union steward or no representative of the union had been withdrawn from the system like [that] and that something should be done about it. And that we should know what was going on about the grievance.

[11] Although the complaint alleges that Sonnier asked also for copies of ''accompanying paperwork,'' Sonnier described his initial requests at several points when he testified. On each of those occasions, save possibly one, he described a request for ''a copy of my grievance,'' without once claiming that he had initially requested copies of the other paperwork in the grievance file.

[12] In so testifying, Sonnier added, ''You know, the pertinent facts regarding my case.'' But he did not explain what he had meant by that phrase and, more significantly, did not claim that he had addressed those words to Salazar. Nor did he retract his other descriptions of his request—did not claim that he had initially requested on October 5 anything other than ''a copy of my grievance.''

However, Mills did not describe any response to Mallory's asserted statement. Yet, if such a statement had been made, the absence of a response seems odd, given the seriousness of the accusation and the setting in which it had been purportedly made. Further, Griffith testified that there had, in fact, been prior instances where grievances of terminated stewards had been withdrawn and he named three specific individuals as examples.

Mills further testified that on the following day she had telephoned Bruce Lee, Respondent International's regional director. During direct examination she claimed that she had told Lee about the withdrawn grievance and that Lee had responded, ''he didn't know anything about it and there was a lot of politics down there and those people down at [Respondent Local] was [sic] crazy and that he was going to look into the matter and get with me.'' Of course, since Lee assertedly told Mills that he knew nothing about the grievance's withdrawal, it would be difficult to infer from his purported remark about ''a lot of politics'' that political considerations—particularly improper ones arising from protected internal union activities—had actually motivated the withdrawal, especially in light of the considerations discussed in subsection III,C,1, supra.

Sonnier, too, described a conversation with Lee. He testified that Hank Gonzales, Respondent International's assistant director, had also been present. During direct examination Sonnier claimed that, after he had presented his facts, the two International officials had promised to get back to him in a couple of days, but never did so. However, during cross-examination he omitted that promise, testifying that they had only said that ''they would . . . see if there was anything that they could do with [Sonnier's] information.'' Apparently they concluded that there was not ''anything that they could do with'' it and, as with Mills, saw no need to respond to the inquiry. In any event, there is no allegation that they independently violated the Act by not contacting either Sonnier or Mills, Moreover, the accounts of these post-October 5 conversations appear to have been part of the ongoing attempt to cast the Respondents, this time Respondent International, in the most unfavorable light.

As pointed out above, Sonnier returned to Respondent Local's hall on October 26 to attend the general membership meetings that day. After ultimately telling Griffith that he was there as a guest, Sonnier attended both meetings. Griffith admitted that before the first meeting he had told Sonnier that if he did not leave the hall, the sheriff would be called again. Further, Griffith acknowledged that before the first meeting he had announced to the membership that Sonnier was no longer a member, that he had been asked to leave but would not do so, and that the sheriff had been called.

In fact, Griffith had been bluffing. No one called the sheriff on October 26. He testified that Sonnier had not stated a legitimate purpose for being at the hall that day and, in light of Sonnier's conduct on October 4 and 5, ''threatening, yelling, you know, I felt that he was particularly violent and I had a Union Hall with 50, 60, 70 retirees in it.'' However, Sonnier had been unaware of the bluff and further, the remark about calling the sheriff was repeated to him by Clarke during the above-mentioned conversation with Sonnier and Mills between the two sessions.

As it turned out, because of the erroneous termination of Sonnier's membership, he was deprived of the opportunity to submit his name into nomination as a candidate for bargaining committee. Further, he was denied the opportunity to cast a ballot in Respondent Local's officers' election on November 7. The General Counsel alleges that by these action Respondent Unions further violated the Act. Yet, as discussed above, the decision to terminate Sonnier's membership was neither an unlawfully motivated nor arbitrary one. Certainly there is no basis for concluding that it had been specifically motivated by intention to preclude Sonnier from running for union office, nor from voting for candidates in Respondent Local's internal election. Consequently, no violation of the Act occurred when Sonnier's membership had been terminated in October. Furthermore, inasmuch as labor organizations are allowed under the Act to restrict their internal affairs to members, see, e.g., *NLRB v. Food & Commercial Workers Local 1182 (Seattle-First National Bank)*, 475 U.S. 192 (1986), there was no violation of the Act when Sonnier was barred from participating in such members' activities as being allowed to attend membership meetings, to submit his name into nomination for office, and to vote in Respondent Local's election for officers.

Nor was the Act violated by the threats to call the sheriff that were made on October 26 and by the call that actually was placed on October 5. As set forth above, a preponderance of the credible evidence establishes that Sonnier had become belligerent and abusive toward Salazar on October 4 and 5, as had some of the group that had accompanied him on the earlier date. Of course, the Act protects an employee's right to protest disposition of his/her grievance and to argue that an incorrect disposition of it was made. But it does not oblige labor organizations' agents to remain passive objects of threats and excessive abuse. That is what happened on October 4 and 5. Accordingly, a preponderance of the credible evidence shows an objective basis for Salazar's fear that the situation might escalate to an actually violent one on October 5 and that his call for police protection did not violate the Act. Nor, in light of Sonnier's conduct on those dates and his failure to voice a legitimate reason for attending the general membership meetings, was it illogical for Griffith to be apprehensive and threaten to call the sheriff on October 26 if Sonnier did not leave the hall. In neither instance does a preponderance of the evidence show an intent to prevent Sonnier from engaging in intraunion activity that is protected by the Act.

Finally, the preponderance of the credible evidence does not support the allegation that Sonnier had been unlawfully deprived on October 5 of information in connection with his grievance. In the first place, Sonnier had admittedly requested initially no more than a copy of his grievance. That had already been sent to him along with the letter notifying him of the grievance's withdrawal. Sonnier did not deny specifically having received that copy when he did receive Salazar's October 4 letter. Further, it is undisputed that, as Salazar credibly testified, Respondent Local's standard procedure is to mail, not hand, the grievant a copy of the grievance when it is withdrawn. There is nothing inherently improper in this procedure and the General Counsel did not so contend. Moreover, the General Counsel does not advance any basis for an exception to the ordinary procedure for employees in Sonnier's situation.

Nor was the Act violated by Salazar's denial of Sonnier's ultimate demand for ''everything.'' There is no evidence that

Respondent Unions ordinarily turned over to grievants anything other than a copy of their grievances. Indeed, a contrary procedure could well undermine their ability to investigate grievances through disclosure of information adverse to grievants revealed by coworkers. Faced with such a prospect of disclosure, coworkers might well be restrained from honestly responding during such investigations, thereby impairing bargaining agents' ability to ascertain the true facts underlying grievances and, in turn, to impairment of the disputes resolution procedures by forcing meritless cases to arbitration due to lack of information. *Vaca v. Sipes*, supra.

In the final analysis, however, it is not necessary to reach that question. For, there is no basis for concluding that Sonnier's request for ''everything'' had been legitimately motivated and, further, for concluding that Salazar had viewed it as a legitimate one, as opposed to being motivated by an attempt at further harassment on October 5. As pointed out above, there is no evidence that Respondent Local ordinarily turned over such information to a grievant. Sonnier's request was ambiguous and, further, was made belatedly, only after Salazar had acquiesced to Sonnier's demand for another, hand-delivered copy of his grievance. Moreover, Sonnier's request was prefaced by additional personal invective, thereby tending to further indicate an intent to harass and abuse Salazar, rather than a genuine need to secure information. Sonnier advanced no particular need at that time for obtaining additional information from the grievance file. In fact, the General Counsel has not advanced one in the circumstances of this case—has not explained how Sonnier's situation would have been advanced by delivery of ''everything'' to him. The absence of a genuine need for that information is reinforced by the fact that Sonnier neither renewed his request for additional information at a later time, nor did he engage in any subsequent activity that necessitated reliance on that information, despite his appeals to Respondent International and, later, to the general membership.

Therefore, a preponderance of the evidence does not support the allegation that Sonnier had genuinely sought additional information and that Respondent Unions unlawfully denied to provide it to him. Nor does it support any of the alleged unfair labor practices by Respondent Unions.

CONCLUSION OF LAW

Douglas Aircraft Company, a component of McDonnell Douglas Corporation, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local Union No. 148, and, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW have not violated the Act in any manner alleged in the amended consolidated complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

It is hereby ordered that the amended consolidated complaint be dismissed in its entirety.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.